राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

मंगलवार, 06 फरवरी, 2018 / 17 माघ, 1939

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla, the 27th *October,* 2017

No.Shram (A) 6-4/2017 (Awards).—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act,1947, the Governor Himachal Pradesh is pleased to order the

publication of awards of the following cases announced by the Presiding Officer, Labour Court Shimla on the website of the Department of Labour & Employment Government of Himachal Pradesh:—

Sr. No	Reference/ Application	Title	Section
1.	Ref.182/2002	Sh. Virender V/S Sh. Anju Arora & Anr.	10
2.	Ref.97/2009	Gaberiel Employees Union V/S M/S Gabriel India Ltd. Parwanoo.	10
3.	Ref.34/2017	Sh. Rajeev Thakur V/S M/S Sun Pharmaceuticals Industries.	10
4.	Ref.66/2017	Sh.Parkash Bhardwaj V/S M/S Danik Bhaskar D.B. Corp. Ltd.	
5.	Ref.86/2017	Sh. Sandeep V/S M/S J.H.S. Laboratories Kala-Amb.	10
6.	Ref.34/2016	Sh. Deep Ram V/S The XEN, IPH, Sunni.	10
7.	Ref.51/2016	Sh.Raghuvir Singh V/s The D.F.O Chopal.	10

By order,
R. D. DHIMAN, IAS
Pr. Secretary (Lab. & Emp.).

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA.

Ref no. 182 of 2002.

Instituted on 21.6.2002.

Decided on. 13.9.2017.

Virender S/o Shri Surjeet Singh R/o V.P.O Taksal, Tehsil Kasauli, District Solan, HP.
. .*Petitioner.*

VS

1. Anuj Arora, Contractor M/s Eicher Demn, Plot no. 29-30, Sector-2, Parwanoo, District Solan, HP.
2. M/s Tafe Motors & Tractor, Pvt. Ltd., Plot no. 29-30, Sector-2, Parwanoo, District Solan, HP. . .*Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri B.R Kashyap, Advocate.

For respondent no.1 : Ms. Sneh Negi, Advocate.

For respondent no.2 : Shri Janesh Mahajan, Advocate.

AWARD

The reference for adjudication, sent by the appropriate government, is as under:—

"Whether the termination of services of Shri Virender S/o Shri Shri Surjeet Singh by the 1. Anuj Arora, Contractor M/s Eicher Demn, Plot no. 29-30, Sector-2,

Parwanoo, District Solan, HP 2. The General Manager, M/s Eicher Demn, Pvt. Ltd., Plot no. 29- 30, Sector-2, Parwanoo, District Solan w.e.f. 11.9.2000 without complying the provisions of the Industrial disputes Act, 1947 is proper and justified? If not, to what relief of seniority, back wages, service benefits and amount of compensation, Shri Virender is entitled to?"

2. Briefly, the case of the petitioner is that, he had been engaged as Gardner by the respondents in the year 1990 and he worked continuously without any interruption till 10.9.2000. On 11.9.2000, his services were terminated without assigning any reason and at that time, he was drawing salary @ Rs. 1890/- per month. It is further averred that the work being performed by him is of permanent nature and is still continuing. However, without giving any notice or paying retrenchment compensation, his services were terminated, and he deserves to be reinstated with all consequential service benefits.

3. By filing separate reply, the respondent no.1 contested the claim of the petitioner wherein preliminary objections have been taken qua maintainability that the replying respondent was not the employer of the petitioner and his actual employer i.e M/s Eicher Demn Parwanoo had been substituted by Tafe Motors as respondent no.2 and that in the year 2003 due to the completion of the work as per the contract/agreement between replying respondent and Eicher Demn, the replying respondent resumed work elsewhere and the replying respondent at no point of time was responsible for the alleged termination of the services of the petitioner in 2000. On merits it has been asserted that the petitioner has alleged his employment as Gardner since 1990 whereas the contract of the replying respondent with Eicher Demn was executed in the year, 1992 and as such the petitioner was already working under Eicher Demn before the contract was awarded to the replying respondent. Against this back-drop a prayer has been made that claim petition against respondent no.1 be dismissed.

4. By filing separate reply, the respondent no.2 i.e Tafe Motors and Tractors Limited contested the claim of the petitioner on having raised various preliminary objections including that the respondent no.2 is neither proper nor necessary party as the dispute relates to the period when Eicher Demn was running the unit and vide business purchase agreement entered between replying respondent and Eicher Demn it was clearly mentioned that any litigation initiated prior to purchase of the unit will be the responsibility of Eicher Demn, that initially the reference was initiated against Eicher Demn and on the application filed by Eicher Demn, the replying respondent was added as party by misleading this Court and that by impleading replying respondent as party, it had been dragged into unnecessary litigation. On merits, it has been asserted that the present dispute arose prior to taking over the unit by replying respondent and as per BPA, it is the liability of Eicher Demn. The respondent no2 also prayed for dismissal of the claim.

5. Rejoinder filed. Pleadings of the parties, gave rise to the following issues, which were framed by this Court on 10.8.2007, 26.7.2017 and 2.8.2017.

1. Whether the services of the petitioner have been illegally terminated by respondent without complying with the provisions of I.D Act, 1947? If so, its effect? . .*OPP.*

2. If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to? . .*OPP.*

3. Whether the petition in the present form is not maintainable? . .*OPR.*

4. Whether the respondent no.2 is neither the proper nor the necessary party as alleged? . .*OPR-2.*

5. Whether the petitioner is not an employee of respondent no.1 as alleged? . .*OPR-1.*

6. Relief.

6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue no.1 No.

Issue no.2 Becomes redundant.

Issue no.3 No.

Issue no.4 Yes.

Issue no.5 Yes.

Relief. Reference answered in favour of the respondents and against the petitioner per operative part of award.

8. Before, I proceed further, it is important to mention here that earlier the aforesaid reference was decided by this Court vide award dated 31.5.2010 which was assailed before the Hon'ble High Court and the Hon'ble High Court vide order dated 7.11.2016 passed in CWP no. 6625/2010 has quashed and set aside the award passed by this Court and remanded the matter back to this Court with the direction to decide the same afresh. The order passed by the Hon'ble High Court is as under:

"Consequently, in view of aforesaid, petition is allowed to the extent that impugned award dated 31.5.2010 passed by Industrial Tribunal-cum-Labour Court, Shimla in Reference No. 182/2002 is quashed and set aside and matter is remanded back to the Industrial Tribunal-cum-Labour Court, Shimla to decide the matter afresh, after affording opportunity of hearing to both the parties. Needless to say that the petitioner, M/s Tafe Motors and Tractors Ltd. would be given opportunity to file reply and to lead evidence, if any, in support of its claim and also afford opportunity to the other side to rebut the said evidence.

Reasons for findings

Issued no.1, 4 & 5.

9. Being interlinked and correlated all these issues are taken up together for discussion and decision.

10. The petitioner appeared into the witness box as PW-1 to depose that he was engaged as Mali in the year, 1990 by the Eicher Tractor on the monthly salary of ` 700/- and he worked till September, 2000. He further deposed that his services were terminated in September, 2000 and no notice was issued to him prior to his termination and that during his service his EPF amount and ESI amount used to be deducted by M/s Eicher Tractors. In cross- examination, he stated that no appointment letter was issued to him at the time of his appointment with Eicher Tractor. He admitted that he never remained the employee of respondent no.1 contractor and that he was working along-with other workers namely KV Thapa, Sant Ram, Bahadur

Bal, Bhim Singh, Gian, Baldev, Bir Bahadur and Pratap before the year, 1992. He denied that the contractor Anuj Arora is not liable to give him any service benefits. When cross-examined on behalf of respondent no.2 he stated that his salary used to be paid by M/s Eicher Tractor. He admitted that he never raised any demand notice against Tafe Motors and that he does not have any dispute with M/s Tafe Motors.

11. On the other hand the respondent no.2 examined Shri Pradeep Saxena, Divisional Manager who stated that vide business purchase agreement dated 27.5.2005 Ex. RW- 1/A the respondent no.2 had taken over the unit in the year, 2005 from Eicher Motors and as per clause 6.10 (IV) (a) of Ex. RW-1/A, the liability of any nature prior to the transfer date will be of Eicher Motors. In cross-examination on behalf of petitioner he admitted that they had taken over the unit along-with assets, liability and all the employees of Eicher Motors and that they had not intimated the petitioner about the taking over of the unit. He deposed that in the list of the employees, name of the petitioner was not mentioned. He denied that it is their liability to settle the present dispute with the petitioner. He admitted that the petitioner was not a party in reference no. 266 of 2002.

12. Shri Anuj Arora, respondent no.1 appeared into the witness box as RW-2 to depose that they have entered into a contract with the then Eicher Tractors in the year 1992 for landscaping and gardening and prior to the year, 1992, there was team of workers/gardeners headed by K.B Thapa in which the petitioner was the employee of Eicher Tractors and his salary was also being deducted by Eicher Tractors. He further deposed that their contract with Eicher Tractors came to an end in the year, 2003. In cross-examination on behalf of respondent no.2 he admitted that the petitioner was working under his supervision w.e.f. 1992 till the year, 2000. When cross-examined on behalf of petitioner he admitted that the petitioner was never engaged by him and that the salary was being paid to the petitioner by Eicher Tractors and he used to disburse the same.

13. I have closely scrutinized the entire evidence on record and from the closer scrutiny thereof, it has become clear that the petitioner was engaged as a Gardener in the year, 1990 by Eicher Tractors and thereafter the name of the company was changed to M/s Eicher Demn and he worked till 10.9.2000. In his deposition before this Court the petitioner has stated that he was engaged as mali in the year 1990 by Eicher Demn on the monthly salary of ` 700/- and he had worked till September, 2000 and his last drawn salary was ` 1890/- per month. He also admitted in cross-examination that he never remained the employee of respondent no.1 contractor and he was never engaged by him. He further admitted that his salary was used to be paid by M/s Eicher Tractors. He also admitted that he had never raised any demand notice against respondent no.2 Tafe Motors and he had got no dispute with it. It has also become clear that the respondent no.1 contractor had entered into a contract with Eicher Demn in the year, 1992 for landscaping and gardening and the petitioner was engaged prior to the year, 1992. RW-2, the contractor categorically deposed before this Court that the petitioner was the employee of Eicher Tractors and his salary was being paid by it and the amount of ESI and EPF was also being deposited by Eicher Tractors and his contract with Eicher Tractors came to an end in the year, 2003. Therefore, the perusal of entire evidence on record shows that the petitioner was the employee of M/s Eicher Demn and as per the admission of petitioner himself he was not the employee of contractor i.e respondent no.1.

14. From the evidence on record, it has also become clear that the respondent no.2 had taken over the unit in the year, 2005 from Eicher Demn vide business purchase agreement dated 27.5.2005 Ex. RW-1/A. As per clause 6.10(IV) (a) of business purchase agreement Ex. RW-1/A all the pending litigation before taking over of the unit would be the liability of M/s Eicher Demn. The relevant extract of the aforesaid clause of business purchase agreement reads as under:

"(iv) Without prejudice to the generality of the foregoing relation to the litigation proceedings, which pertain to a period prior to the Transfer date the following principles shall apply:

(a) If pursuant to any such litigation proceeding, any costs, expenses, penalties, interest or monetary liability of any nature whatsoever is required to be paid the Seller shall bear all such monetary liabilities to the extent they pertain to a period prior to the Transfer Date and are directly attributable of the actions of the Seller. For the avoidance of doubt it is clarified that if after the closing date, the default previously committed by the Seller or the issue involved in the litigation proceedings is continued by the Buyer on its violation, any costs, expenses or liabilities, imposed for continuance of such default or issue after the closing date, shall be borne by and discharged by the Buyer."

Moreover, in another reference i.e reference no. 266/2002, M/s Eicher Demn Parwanoo had entered into a settlement with the workman to pay him a sum of ` 4.70 lakhs as full & final settlement vide order dated 20.9.2012 which reads as under:

"Today, the petitioner and respondent no.2 i.e. M/s Eicher Demn, Parwanoo entered into a settlement in this reference vide which respondent no.2 (M/s Eicher Demn, Parwanoo) agreed to pay lump-sum amount of Rs. 4.70 lakhs (Rs. Four Lakhs Seventy Thousand only), to the petitioner as full & final settlement between the parties. This offer is accepted by the petitioner. Statements of Ld. Counsel for respondent no.2 and petitioner to this effect were recorded. Petitioner has also stated that in view of said settlement he has got no claim left towards the respondents in any manner whatsoever.

In the light of aforesaid settlement this claim petition is decided and the reference is answered accordingly. It is made clear that the respondent no.2 (M/s Eicher Demn, Parwanoo) shall make the payment of aforesaid amount of Rs. 4.70 lakhs (Rs. Four Lakhs Seventy Thousand only) to the petitioner on or before 31/10/2012 failing which petitioner shall be entitled to the interest @ 9% per annum. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Sd/-
Presiding Judge,
Labour court, Shimla.

Therefore, from the perusal of the entire evidence on record it has become clear that prior to taking over of the unit i.e 1.6.2005, the liability was of M/s Eicher Demn regarding all the pending litigations as such the reference no. 266 of 2002 which was already pending adjudication before this Court was settled by M/s Eicher Demn before this Court vide aforesaid order dated 20.9.2012. Had it not been the liability of M/s Eicher Demn, it would have not settled the claim in reference no. 266/2002. Since, in the present case also the petitioner was engaged by Eicher Demn and his services were terminated by Eicher Demn before taking over of the unit, therefore, as per the business purchase agreement Ex. RW-1/A, the respondent no.2 cannot be held liable for the termination of the services of the petitioner. Hence, it can safely be held that the respondent no.2 is neither the proper nor the necessary party in the present case.

15. From the perusal of the record it has become clear that in the present reference sent by the appropriate government, M/s Eicher Demn was a party. However, an application was filed by M/s Eicher Demn for deleting its name and for impleading M/s Tafe Motors as one of the respondents which application was allowed vide order dated 18.12.2006 passed by this Court and the learned counsel for the petitioner has not raised any objection for allowing of that application. The order dated 18.12.2006 is reproduced as under:

"Reply of application not filed. Otherwise also the counsel for the petitioner has no objection if the present application is allowed and the name of the M/s Tafe Motors and Tractor Ltd. impleaded as one of the respondent subject to payment of cost. The application is allowed and M/s Tafe Motors and Tractors Ltd. is ordered to be impleaded as one of the respondent in place of respondent no.2 subject to payment of Rs. 300/-. Now to come up on 19.2.2007 for rejoinder if any, and issues."

Therefore, the perusal of the aforesaid order shows that M/s Tafe Motors was ordered to be impleaded as respondent in place of Eicher Demn on the "no objection" given by the learned counsel for the petitioner. As observed earlier, since the services of the petitioner were engaged and thereafter terminated by Eicher Demn in the year, 2000, Eicher Demn was a necessary party in the present reference as such in the absence of Eicher Demn, no order can be passed against M/s Eicher Demn and therefore, it cannot be said that the services of the petitioner have been illegally terminated by Eicher Demn without complying with the provisions of the Act. Hence, all these issues are decided accordingly.

Issue no.2.

16. Since, the petitioner has failed to prove issue no.1 above, this issue becomes redundant.

Issue no.3.

17. In support of this issue, no evidence has been led by the respondents. However, the petitioner has filed this claim petition pursuant to the reference made by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondents.

Relief.

As a sequel to my findings on the aforesaid issues, the claim of the petitioner fails and is hereby dismissed. Consequently, the reference stands answered against the petitioner and in favour of the respondents. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 13th Day of September, 2017.

(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA.

Ref. No. 97 of 2009

Instituted on 18.11.2009.

Decided on 20.9.2017.

Gabriel Employees Union, INTUC, Parwanoo, District Solan, HP through President/General Secretary.

VERSUS.

. .*Petitioner.*

1. Madan Lal Contractor, C/o M/s Federal Mogul Bearings India Ltd. Sector-II, Parwanoo, District Solan, HP.

2. M/s Federal Mogul Bearings India Ltd. Sector-II, Parwanoo, District Solan, HP, through its Managing Director. . .*Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri R.K Khidta, Advocate.

For respondent no.1 : Shri Vishal Panwar, Advocate.

For respondent no.2 : Shri Rahul Mahajan, Advocate.

AWARD

The following reference has been received from appropriate government for adjudication:

"**Whether the financial demands raised by the President/General Secretary, Gabriel Employees Union, INTUC, Parwanoo, District Solan, HP vide demand notice dated 7.11.2006 (copy enclosed), before the management of M/s Gabriel India Ltd. Plot No. 5, Sector-2, Parwano and Shri MadanLal Contractor of M/s Federal Mogul Bearings India Ltd., Sector-II, Parwanoo, District Solan, HP. are legal, reasonable and justified? If yes, what financial benefits the canteen workmen are entitled to as per said demand notice, if not, what are its legal effects?"**

2. Facts in brief as averred by the petitioner are that the workers of the petitioner union working with the respondent company have formed union known as Gabriel Employees Union which is duly registered and its registration number is 258 and Shri DwarkaNath is the duly elected President of the union and that he has been authorized to file the claim petition on behalf of the workers union. It is further said that workers namely S/Shri Hari Ram, Parshotam, Bheem Bahadur, Mohinder Singh, Ganga Ram, Shiv Dass, Bhisham Singh, NarenderRana, NeterBahadur, Sheer Singh, JagdishCander and Bhag Chand, are working in the canteen and kitchen garden of the respondents and that they are the members of the Union. Initially, all the workers had been employed by respondent no.2, which is clear from the ESI Card, issued by the competent authority. However, later on, they have been shown to have been engaged through respondent

no.1. Thus, at present, all the workers have been working with respondent no.2 through respondent no.1. It is further averred that even, respondent no.1, himself is the employee of respondent no.2 and is getting monthly salary. Just to frustrate the rightful claim of the workers and in order to save themselves from their liability, the company has shown him (respondent no.1) as contractor. Earlier, the parties used to settle their respective claims including increase in salary of the workers, by way of long term settlements either for three years or five years. Settlement, Annexure P-3, was made for three years and the later on, settlement Annexure P-4, for five years. After the expiry of every settlement, new settlement used to be executed between the parties by increasing their salaries as well as other benefits. The workers also used to perform their duties, as agreed in the settlement. The last long term settlement between the workers union and respondents had been executed for the period w.e.f. 1.10.2001 to 30.9.2006, as per Annexure P-4. Ultimately, after the expiry of this settlement, the workers, through its union, approached the respondents for the settlement of demands but due to their (respondents) adamant attitude, no settlement could be arrived at between the parties. In this way, the workers had been forced to file demand notice through Union. Even, during conciliation proceedings, the needful could not be done due to adamant attitude of the respondents. It is further said that the demands, raised by the workers, through its union, are genuine and the same deserve to be allowed because due to heavy inflation, their salaries deserve to be increased. It is further asserted that the respondents are bound to settle their demands as their wages and other benefits, used to be increased only by way of settlement. Since, the respondents are not settling their demands, it amounts to unfair labour practice for which they (respondents) deserve to be punished and the demands of the workers, raised through its demand notice dated 7.6.2006, deserve to be allowed and the respondents are required to be directed to pay the same from the date of expiry of earlier settlement i.e w.e.f. 30.9.2006. It is further said that the work load of the workers has also got increased as initially, there had been 150 workers who used to take meals and now, at present, there are 350 workers and staff members who are taking food/meals, in the canteen. As far as the strength of the workers, working in the canteen, is concerned, it has remained same. It is further maintained that despite the expiry of the earlier settlement, salary and other benefits of the workers have not been increased by the respondents. Further, both the respondents are liable to accept their financial demands as they (workers) have been doing work in the canteen which is owned and possessed by the respondent no.2 and shown to have been employed through respondent no.1. Thus, they (respondents) become jointly and severely liable to accept their demands and to pay the benefits as raised in the demand notice. Against this back-drop, a prayer has been made to accept all the demands, raised in demand notice dated 7.11.2006.

3. By filing separate reply, the respondent no.1 (MadanLal, Contractor), contested the claim filed by the petitioner wherein preliminary objections have been raised qua maintainability and that the petitioner has concealed true and material facts from the Court. On merits, it has been asserted that the canteen is being run by the replying respondent and that the workers are his employees. As far as M/s Federal Mogul Bearings India Ltd., (respondent no.2), is concerned, it has nothing to do with the workers, as per their names mentioned by the petitioner. It is further clarified that the replying respondent has been running the canteen since the time of Gabriel India Ltd., and subsequently M/s Anand Engine Components Ltd. The workers of the replying respondent are not the members of Gabriel Employees Union having registration no. 258 and that Shri DwarkaNath has not been authorized to raise the demand notice and to file the claim petition. Under the Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter referred as Contract Labour Act) the replying respondent has got licence and M/s Federal Mogul Bearings India Ltd., (respondent no.2) is also registered under the Contract Labour Act. It has been denied that the workers have been performing their duties as per the settlement. In fact, they have flouted the settlement many times. The names of Hari Ram and Bhag Chand are in respect of the employees of replying respondent, as per ESI Card. The benefits to the workers are being paid by the replying respondent but the additional benefits could not be

paid for want of financial viability. The demand notice, as raised, is false and frivolous. It is further averred that, at present, the wages and other benefits, which have been paid to the workers, are far above than what the similar workers are getting while being employed in other canteens, in different establishments. At no point of time, there had been more than 170 to 190 workers and staff members to take food/meals in the canteen. It is further averred that the replying respondent cannot accept the unjustified demands raised by the petitioner. The respondent no.1 prayed for the dismissal of the claim petition.

4. M/s Federal Mogul Bearings India Ltd., (respondent no.2), has also contested the claim of the petitioner on having raised preliminary objections qua maintainability and that the petitioner has concealed true and material facts. It has further been clarified that there had been no relationship of the employer and the employees between the replying respondent and that of the workers, employed by MadanLal, Contractor. In fact, the workers employed by canteen contractor are the employees of MadanLal, who is responsible for the payments of ESI, EPF etc. and that the replying respondent has been unnecessarily arrayed as party in the claim petition. On merits, it has been asserted that the Gabriel India Ltd., had been set-up in 1979, in Parwanoo, District Solan H.P and in the month of March, 2007, it was demerged in to a separate company i.e M/s Anand Engine Components Ltd. In Feb., 2008, Federal Mogul Components took control of M/s Anand Engine Components and renamed it as Federal Mogul Bearings India Ltd. As far as MadanLal, Contractor, is concerned, he has got licence for providing contract labour to respondent no.2 under the Contract Labour Act and the replying respondent has also the registration to employee contract labour under the Contract Labour Act. Thus, at no point of time, the said workers, employed by MadanLal Contractor, were the employees of replying respondent. Their ESI Cards only reflect the name of Gabriel India Ltd., in the address column and do not specify that Hari Ram and Bhag Chand are the employees of Gabriel India Ltd. When, demand notice dated 7.11.2006, was raised, Gabriel India Ltd., had filed a reply during conciliation proceedings and subsequently, a reply was also filed by M/s Anand Engine Components Ltd., whereby it had been specifically stated that the workers, working in the canteen, were not their employees and that the union had no legitimate right to raise any demand or dispute. It is also averred that whenever, settlements had been entered into between Madan Lal, Contractor/canteen workers and Gabriel Employees Union, the replying respondent had not been party to the same. Even, in the reply, filed to the demand notice, before Labour-cum- Conciliation Officer, MadanLal Contractor had submitted that the canteen workers had been employed by him and that they were getting more than the minimum wages. Apart from this, they had also been getting other benefits/allowances. The respondent no.2 also prayed for the dismissal of the claim petition.

5. By filing rejoinders to the replies filed by respondent no.1 & 2, the petitioner has reaffirmed its allegations by denying those of the respondents.

6. Pleadings of the parties gave rise to the following issues which were framed on 21.4.2011.

1. Whether the demands having been raised by the petitioner union are reasonable and justifiable as alleged? . .*OPP.*

2. If issue no.1 is proved in affirmative, whether the petitioner union is entitled for financial benefits as prayed? . .*OPP.*

3. Whether this petition is not maintainable as alleged? . .*OPR.*

4. Relief.

7. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

8. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1 Decided accordingly.

Issue no.2 Decided accordingly.

Issue no.3 Not pressed.

Relief. Reference partly answered in favour of the petitioner union and against the respondent no.1 contractor, per operative part of award.

9. Before, I proceed further, it is important to mention here that vide award dated 3.3.2014, the reference was answered in favour of the petitioner union and against respondent no.2 which was assailed before the Hon'ble High Court by filing CWP no. 3276 of 2014 which was decided on 3.5.2017 and the Hon'ble High Court has remitted the case back to this Court for fresh adjudication. The relevant portion of the order of Hon'ble High Court passed in CWP no. 3276 of 2014 reads as under:

"**In view of the aforesaid discussion, this Court has no option but to remit back the award to the Labour Court for fresh adjudication. The parties, through their counsel, are directed to appear before the Labour Court on 29.5.2017. The learned Labour Court will afford an opportunity to the parties to place on record any additional material, if so desired. As the industrial dispute is nearly a decade old, therefore, it is expected that the same would be disposed of as expeditiously as possible and in no event later than 30.9.2017".**

10. In terms of the aforesaid orders of the Hon'ble High Court, the petitioner as well as the respondents had placed on record the additional material.

Reasons for findings

Issue no.1& 2.

11. Being interlinked, both these issues are taken up together for discussion and decision.

12. To prove its case, the petitioner union examined two PWs. PW-1 Shri Dwarka Nath has tendered in evidence his affidavit wherein he reiterated almost all the averments as stated in the claim petition. He also tendered in evidence the original resolution, settlements dated 20.1.2005, 12.9.1995, 1.3.2005, demand notice dated 28.9.2011 and 7.11.2006, minutes of the canteen committee dated 20.6.1996, canteen menu dated 30.3.1990 and receipts of the membership of the workers in the union Ex. P-1 to Ex. P-35. In the cross- examination, he denied that the workers of Madan Lal, Contractor, had never been the members of their union. He admitted that in the ESI Card, the name of the employer is not mentioned. He denied that the company had no concern with Ex. P- 4 and Ex. P-7, (minutes of the canteen committee meeting, held on 10.6.1986). He expressed his lack of knowledge that ESI, EPF & other benefits, on behalf of canteen workers, are being paid by Madan Lal Contractor. He also feigned ignorance to the suggestion that the workers are getting free food, other benefits and more than minimum wages. He also expressed his ignorance that the contractor had provided interest free loan to the

workers. He admitted that every worker has different ESI number. He denied that the petitioners are the workers of Madan Lal, contractor only.

13. PW-2 Shri Mahender Singh, tendered in evidence his affidavit by way of examination–in-chief. In cross-examination on behalf of respondent no.1 he denied that he was the worker of the contractor and he was being paid wages by the contractor. He also denied that the workers were being paid all the benefits by the contractor. He admitted that the settlement was entered into between the contractor and the workers. In cross-examination on behalf of respondent no.2 he admitted that he was not given any appointment letter by M/s Anand Engine Components, Gabriel India Ltd. and Federal Mogul India Ltd. He expressed his ignorance to the suggestion that the settlement has not been signed on behalf of the company by anybody. He admitted that ESI and EPF and other benefits are being given to them by Madan Lal Contractor. He also admitted that Madan Lal is the canteen contractor of the company.

14. RW-1 Madan Lal, canteen contractor, appeared into the witness box as RW-1 and tendered his affidavit Ex. RW-1/A wherein he reiterated almost all the averments as made in the reply filed on his behalf. He also tendered in evidence copy of licence Ex. R-2, wage sheet Ex. R-3, workmen registration Ex. R-4, bonus paid Ex. R-5 and attendance register Ex. R-6. When, cross-examined on behalf of respondent no.2, he admitted that one worker namely Bhim Bahadur has expired. He admitted that he maintains the record under labour laws including EPF, attendance register, payment of wages etc. He further admitted that, he has been paying the wages to the workers and HP-5475-A, is his EPF code number. He has not got independent ESI Code number but the contribution in this regard is being made by him. He had an agreement with Gabriel Employees Union, in which respondent no.1, was not party. When, cross-examined on behalf of the petitioner, he stated that the licence of the contractor was taken by him in the year, 1988. Prior to that, he had been working with M/s Gabriel India Ltd. and till date, he has been doing work there. From the company, he does not get any salary. Further explained that, he gets commission to the tune of Rs. 5,000/- to 7,000/-, from the company. With the company, he has agreement to run the canteen, as per Ex. RA. He admitted that in the year, 1981, he had no licence of contractor-ship. At that time, he was territorial subedar manager. He admitted that the canteen is of the company and it is also situated in its premises. The bills Ex. RA-1 to Ex. RA-4, have been issued in the name of the company regarding the articles/goods which were supplied to it. The company has constituted a canteen committee as per Ex. RA-5. His name does not figure in that list as per Ex. RA-5. In the canteen, the workers get food on subsidized rates. The money, on subsidy, is paid by the company. He denied that some workers were already employed in Gabriel India Ltd., before his joining the same. He denied that S/Shri Mahender Singh, Bhim Bahadur, Hari Singh and Jagdish had been employed in the year, 1980. He volunteered that they had been employed in the year, 1983-84. He further stated that he cannot increase the wages of the workers till the management increases his amount. Regarding payment of salaries, bonus etc., to the workers, he raises bills, the amount of which is paid by the company. He admitted that HP-5475 is the code of the company. He further stated that Sub Code HP 5475-A is his code. The ESI code is that of the company. He denied that the workers are the employees of the company.

15. Shri Balvinder Singh, Manager HR appeared into the witness box as RW-2 and tendered in evidence his affidavit EX. RW-1/A, wherein he reiterated almost all the averments as made in the reply filed by respondent no.2. He also tendered in evidence appointment letter Ex. RW-2/B, registration certificate Ex. RW-2/C, reply dated 4.4.2008 Ex. RW-2/D, copy of order dated 23.12.2011 Ex. RW-2/E, copy of writ petition mark DX and letter dated 15.2.2010 mark DY. In the cross-examination by the petitioner, he has stated that since 6.9.1982, he has been working in the company. He stated that before his joining, the company (Gabriel India Ltd.), was already in existence and he had got appointment in Gabriel India Ltd. and at that time, the canteen was being run in the company. He denied that the canteen was being run by the

company. He admitted that the licnece of Madan Lal, Contractor, was issued on 19.2.1987. He stated that he was working as Manager, HR, in the company. He expressed his ignorance that the contractor Shri Madan Lal was not registered in the year, 1981. He admitted that the canteen was being run in the premises of the company and the company was not charging any rent from the contractor. He stated that the payment to the workers is being made by the company through contractor. He further stated that in the year, 1981, they had given the contract of canteen to Madan Lal, contractor. He clarified that the payments are being made through Madan Lal. He admitted that bills Ex. RA-1 to Ex. RA-4, have been issued in the name of the company. The company has constituted a canteen committee. He denied that all the settlements till date have been signed by the company. He also denied that the company was giving monthly salary to Madan Lal Contractor. He denied that when the workers had raised the demand notice the company had pressurized them that their services would be terminated. He further denied that all the workers of the canteen are the workers of respondent no.2.

16. I have closely scrutinized the entire evidence on record and the first question which arises for consideration before this Court is as to who is the employer of the canteen workers. Though, in the terms of reference this question has not been referred to this Court for adjudication, however, in the opinion of this Court the adjudication of the aforesaid question is necessary to decide the real question in controversy between the parties and the same is the matter incidental to the dispute referred by the appropriate government under the present reference because this Court has to gave its findings as to which of the respondents is liable to accept the demands raised by the petitioner union. It is settled law that the jurisdiction of the Industrial Court to decide the industrial dispute is determined by the terms of reference and the matter incidental thereto as per section 10(1) of the Act. Moreover, in the order dated 23.12.2011 Ex. RW-2/E passed in CWP No. 11448/2011-E, it has been observed by the Hon'ble High Court that it would be open to the respondent no.2 company to take all available contention before the Labour Court and it is for the Labour Court to enter a finding as to whether the respondent no.2 company is principle employer or not. The relevant potion of the aforesaid order is reproduced as under:

"2. According to the petitioner, he is unnecessary party since the employer contractor is already there on the party array. The Labour Commissioner rejected the request for amendment of the Reference stating also that the petitioner management is the principal employer and hence is a necessary party. That question is yet to be decided. While adjudicating the Reference already made, it will be open to the petitioner to take all available contentions before the Labour Court and it is for the Labour Court to enter a finding as to whether the petitioner is principal employer or not. Therefore, we vacate the findings entered into by the Labour Commissioner in Annexure P-9 and dispose of the writ petition declining to otherwise interfere with Annexure P-9, but reserving liberty to the petitioner to take all available contentions before the Labour Court."

Therefore, this Court proceeds to decide the question as to who is the employer of the canteen workers. The learned counsel for the petitioner contended that the workers who are working in the canteen were initially employed by respondent no.2 company, however, later on they have been shown engaged through respondent no.1 contractor just to frustrate the rightful claim of the petitioner. Therefore, it was for the petitioner to prove by leading cogent and satisfactory evidence on record that the canteen workers were the employees of respondent no.2 company. To prove its case the petitioner union examined Shri Dwarka Nath as PW-1 who deposed that all the canteen workers were employed by respondent no.2 company but later on they have been shown engaged through respondent no.1 contractor. In this respect he has tendered in evidence the photocopies of ESI slips mark A and mark B. However, the perusal of the aforesaid ESI slips mark A and mark B shows that the name of employer has not

been mentioned in the same and the name of respondent no.2 company has been shown against the column of address. PW-1 also admitted in cross-examination that the name of the employer has not been mentioned in ESI card. Therefore, no benefit can be derived by the petitioner from the ESI slips mark A and mark B. To take this view I am supported with the judgment of our own Hon'ble High Court **reported in 2016 LLR 580 Manoj Kumar Vs. M/s Sintex Industries Pvt. Ltd**. wherein it has been held that only on the basis of ESI card having address of the principal employer, employer- employee relationship between principal employer and the employee would not come into existence.

17. The learned counsel for the petitioner further contended that since the ESI code is of the respondent no.2 company under which the contributions are being deposited, therefore also it has been proved that the canteen workers are the employees of respondent no.2 company and in this respect he had also invited my reference to the cross-examination of RW-1 wherein he admitted that the ESI code is of the respondent no.2 company. However, this contention of the learned counsel for the petitioner is devoid of any force as in the aforesaid judgment of our own Hon'ble High Court in Manoj Kumar's case (supra), it has been held that mere depositing of ESI contribution of the contractors employees by the principle employer would not make the workmen an employee of the principal employer since it is a mandatory responsibility of the principal employer to ensure that workman is registered member under the scheme of ESI Act and contributions are deposited subject to realization of the same from the contractor as the ESI Act does not prescribe that a contractor has to possess his own code number. PW-1 further deposed in his affidavit that the petitioner union and the respondents used to settle their demands as per the settlements dated 12.9.1995 Ex. P-3 and dated 1.3.2005 Ex. P-4. However, the perusal of these settlements shows that the same has been entered into between the respondent no.1 contractor and the workers union and the respondent no.2 company is not a party to the aforesaid settlements. PW-2 also admitted in cross-examination that the settlements were entered into between Madan Lal contractor and workers union.

18. While appearing into the witness box as RW-1, the contractor Shri Madan Lal in his evidence by way of affidavit deposed that the workers have been employed by him in the canteen which is being run by him and he is paying wages to the workers besides giving them washing allowance, conveyance allowance etc. He further deposed that the contribution under ESI Act, 1948, EPF and all other statutory compliance under the Labour Law and Industrial Law is being done by him. In cross-examination on behalf of petitioner he categorically stated that he was not getting any salary from the company rather he was getting commission. He further deposed that he entered into a contract with the company to run the canteen, the copy of which is Ex. RA. RW-2 Shri Balwinder Singh also deposed in his evidence by way of affidavit Ex. RW-2/A that the contractor Shri Madan Lal is the employer of the canteen workers and he is making all the compliance under the Labour Law. He further deposed that the company exercises no supervision and control over the workers employed by the canteen contractor.

19. From the perusal of the contract Ex. RA, it has become clear that M/s Gabriel India Ltd. had entered into a contract with respondent no.1 contractor on 8.3.1981 for running the canteen. It has also become clear from the record that M/s Gabriel India Ltd. was demerged into a separate company i.e M/s Anand Engine Components Ltd. and in Feb., 2008 M/s Federal Mogul Corporation took control of M/s Anand Engine Components and renamed as M/s Federal Mogul bearing Ltd i.e the respondent no.2 company which has the certificate of registration from the prescribed authority Ex. RW-2/C under the Contract Labour Act to employ the contract labour. The respondent no.1 contractor has stated in cross examination that he had obtained the licence under the Contract Labour Act in the year, 1988. The learned counsel for the petitioner contended that since the contractor had obtained the licence only in the year 1988, therefore, it cannot be said that the canteen workers are the employees of contractor. However, this contention

of the learned counsel for the petitioner deserves to be rejected because non-possession of the licence under section 12 of the Contract Labour Act would only result in prosecution under sections 23/25 of the Contract Labour Act. To take this view I am fortified with the judgment of **Hon'ble Supre me Court in AIR 1992 SC 457, titled as Dena Nath & Ors Vs. National Fertilizers Ltd. And others** wherein it was held as under:

"20……..The Act as can be seen from the scheme of the Act merely regulates the employment of contract labour in certain establishment and provides for its abolition in certain circumstances. The Act does not provide for total abolition of contract labour but it provides for abolition by the appropriate Government in appropriate cases under Section 10 of the Act.

22…….The only consequences provided in the Act where either the principal employer or the labour contractor violates the provision of Sections 9 and 12 respectively is the penal provision, as envisaged under the Act for which reference may be made to Sections 23 and 25 of the Act……..."

The aforesaid judgment was considered by the Constitutional Bench of **Hon'ble Supreme Court in Steal Authority of India Vs. National Union Water Front 2000 (7) SCC-1** in which it was observed as under:

"96. In Dena Naths case (supra), a two-Judge Bench of this Court considered the question, whether as a consequence of noncompliance with Sections 7 and 12 of the CLRA Act by the principal employer and the licensee respectively, the contract labour employed by the principal employer would become the employees of the principal employer. Having noticed the observation of the three-Judge Bench of this Court in The Standard-Vacuums case (supra) and having pointed out that the guidelines enumerated in sub-section (2) of Section 10 of the Act are practically based on the guidelines given by the Tribunal in the said case, it was held that the only consequence was the penal provisions under Sections 23 and 25 as envisaged under the CLRA Act and that merely because the contractor or the employer had violated any provision of the Act or the Rules, the High Court in proceedings under Article 226 of the Constitution could not issue any mandamus for deeming the contract labour as having become the employees of the principal employer. This Court thus resolved the conflict of opinions on the said question among various High Courts. It was further held that neither the Act nor the Rules framed by the Central Government or by any appropriate Government provided that upon abolition of the contract labour, the labourers would be directly absorbed by the principal employer".

20. Hence, the perusal of the aforesaid judgments of the Hon'ble Apex Court shows that the consequence of violation of the Contract Labour Act i.e non registration of the establishment under section 7 and non-possession of the licence under section 12 of the Act would only result in prosecution under sections 23/25 of the Contract Labour Act. Therefore, in view of the aforesaid legal position, there is no force in the contention of the learned counsel for the petitioner that since respondent no.2 contractor was not having any licence under section 12 of the Contract Labour Act, the workers of petitioner union would be deemed to be the direct employees of the respondent no.2 company. Moreover, Contract Labour Act only applies to an establishment or contractor who employees 20 or more workmen. However, in the present case it has been established on record that the respondent no.1 contractor had employed less than 20 workmen as such the Contract Labour Act is not applicable in the present case. Therefore also, due to the non-possession of the licence under section 12 of the Act by the respondent no.1 contractor prior to the year 1988, it cannot be said that the canteen workers are the employees of respondent no.2 company.

21. It is by now well settled that if the industrial adjudicator finds the contract between the principal employer and the contractor to be a sham, nominal and a camouflage to deny

employment benefits to the employee, it can grant relief to the employee by holding that the workman is the direct employee of the principal employer. **In (2009) 13 SCC titled as International Airport Authority of India Vs. International Air Cargo Workers Union and Anr**., it has been held by the Hon'ble Apex Court as under:

"36. But where there is no abolition of contract labour under section 10 of CLRA Act, but the contract labour contend that the contract between principal employer and contractor is sham and nominal, the remedy is purely under the ID Act. The principles in Gujarat Electricity Board continue to govern the issue. The remedy of the workmen is to approach the industrial adjudicator for an adjudication of their dispute that they are the direct employees of the principle employer and the agreement is sham, nominal and merely a camouflage, even when there is no order under section 10(1) of CLRA Act.

37. The industrial adjudicator can grant the relief sought if it finds that contract between principal employer and the contractor is sham, nominal and merely a camouflage to deny employment benefits to the employer and that there is in fact a direct employment, by applying tests like: who pays the salary; who has the power to remove/dismiss from service or initiate disciplinary action; who can tell the employee the way in which the work should be done, in short who has direction and control over the employee. But where there is no notification under section 10 of the CLRA Act and where it is not proved in the industrial adjudication that the contract was sham/nominal and camouflage, then the question of directing the principal employer to absorb or regularize the services of the contract labour does not arise.

37. However, in the present case neither the petitioner union had specifically pleaded nor led any evidence to show that the contract between the respondent no.2 company and respondent no.1 contractor is a sham, nominal and camouflage. The learned counsel for the respondent no.2 contended that since there are more than 250 workers employed in the unit of respondent no.2 company and it was statutory obligation cast upon the respondent no.2 company under section 46 of the Factories Act, 1948, the canteen has been provided by the respondent no.2 company in its premises which is being run by respondent no.1 contractor under the contract Ex. RA, therefore, it cannot be said that the canteen workers are the employees of respondent no.1 company and in this respect he has placed reliance upon the judgment of Hon'ble Supreme Court reported in **(2014) 9 SCC 407 Balwant Rai Saluja and another Vs. Air India Ltd. and others**. At this juncture it would be beneficial to reproduce the relevant portion of the aforesaid judgment which reads as under:

"30. The question before us is "when the company is admittedly required to run the canteen in compliance with the statutory obligation under Section 46 of the 1948 Act, whether the canteen employees employed by the contractor are to be treated as the employees of the company only for the purpose of the 1948 Act or for all the other purposes."

31……

32……

"41. We conclude that the question as regards the status of workmen hired by a contractor to work in a statutory canteen established under the provisions of the 1948 Act has been well settled by a catena of decisions of this Court. This Court is in agreement with the principle laid down in Indian Petrochemicals case wherein it was held: (SCC p. 499, para 22)

"22…the workmen of a statutory canteen would be the workmen of the establishment for the purpose of the 1948 Act only and not for all purposes."

We add that the statutory obligation created under Section 46 of the 1948 Act, although establishes certain liability of the principal employer towards the workers employed in the given canteen facility, this must be restricted only to the 1948 Act and it does not govern the rights of employees with reference to appointment, seniority, promotion, dismissal, disciplinary actions, retirement benefits, etc., which are the subject matter of various other legislations, polices, etc. Therefore, we cannot accept the submission of Shri Jayant Bhusan, learned counsel that the employees of the statutory canteen ipso facto become the employees of the principal employer.

42……

43……

" 76. It has been noticed above that workmen hired by a contractor to work in a statutory canteen established under the provisions of the 1948 Act would be the said workmen of the given factory or corporation, but for the purpose of the 1948 Act only and not for all other purposes. Therefore, the appellant workmen, in the present case, in light of the settled principles of law, would be workmen of Air India, but only for the purposes of the 1948 Act. Solely by virtue of this deemed status under the 1948 Act, the said workers would not be able to claim regularization in their employment from Air India. As has been observed in Indian Petrochemicals case, the 1948 Act does not govern the rights of employees with reference to recruitment, seniority, promotion, retirement benefits, etc. These are governed by other statures, rules, contracts of policies.

77……

78……

"90. In terms of the above, the reference is answered as follows:

the workers engaged by a contractor to work in the statutory canteen of a factory would be the workers of the said factory, but only for the purposes of the 1948 Act, and not for other purposes, and further for the said workers, to be called the employees of factory for all purposes, they would need to satisfy the test of employer-employee relationship and it must be shown that the employer exercise absolute and effective control over the said workers. **"**

23. In the present case also from the perusal of entire evidence on record it has become clear that there are more than 250 workers working/employed by respondent no.2 company, hence, under section 46 of the Factories Act, 1948, it is the statutory obligation of the respondent no.2 company to provide a canteen as such the canteen has been provided in the premises of the respondent no.2 company which is being run by respondent no.1 contractor under contract Ex. RA. Therefore the workers of the petitioner union who had been engaged by respondent no.1 contractor would be the workers of the respondent no.2 company only for the purpose of 1948 Act and not for any other purpose. From the perusal of the entire evidence on record it has become clear that the canteen workers have failed to satisfy the test of employer-employee relationship with respondent no.2 company. In **Inter national Air port Authority of India's case (supra)** , the Hon'ble Supreme Court also explained the terms "control" and "supervision" which reads as under:

"38.The tests that are applied to find out whether a person is an employee or an independent contractor may not automatically apply in finding out whether the contract labour agreement is a sham, nominal and is a mere camouflage. For example, if the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions,

supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by contractor, if the right to regulate employment is with the contractor, and the ultimate supervision and control lies with the contractor.

39. The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor."

53.13…… Merely because the contract labour work is under the supervision of the officers of the principal employer, it cannot be taken as evidence of direct employment under the principal employer.

54. ……..Exercise of some control over the activities of contract labour while they discharge their duties as labourers, is inevitable and such exercise is not sufficient to hold that the contract labour will become the direct employees of the principle employer."

24. In **Balw ant Rai Saluj a's case** (supra) it has been held in para 65 that the relevant factors to be taken into consideration to establish an employer- employee relationship would include, inter alia:

"(*i*) who appoints the workers;

(*ii*) who pays the salary/remuneration;

(*iii*) who has the authority to dismiss;

(*iv*) who can take disciplinary action;

(*v*) whether there is continuity of service; and

(*vi*) extent of control and supervision i.e. whether there exists complete control and supervision.

As regards extent of control and supervision, we have already taken note of the observations in Bengal Nagpur Cotton Mills case, International Airport Authority of India case and Nalco case.

In the present case, as observed earlier the wages are being paid to the canteen workers by respondent no.1 contractor and the contribution under ESI Act, 1948, EPF and all other statutory compliance under the Labour Law and Industrial Law is also being done by him. The respondent no.2 has also placed on record the settlement arrived at between respondent no.1 contractor and one of the workers of petitioner union Shri Bhag Chand wherein due to his resignation from service vide resignation letter dated 24.6.2013, a settlement was arrived at between the workman Bhag Chand and respondent no.1 contractor Madan Lal and as per the terms of settlement all the service benefits including gratuity was paid to the worker by respondent no.1 contractor which also shows that the respondent no.1 contractor had the authority to appoint and dismiss the workers. Merely because the bills Ex. RA-1 to Ex. RA-4 which

are in the name of respondent no.2 company will not make the workers, the employees of the respondent no.2 company. In view of the judgment of International Air Port cited supra, the principal employer only controls and directs the works to be done by a contract labour and merely because the contract labour work is under the supervision of the officers of the principal employer, it cannot be taken as evidence of direct employment under the principal employer. No satisfactory evidence has been led by the petitioner that the canteen workers are doing the work under the direct supervision of respondent no.2 company and the contract between respondent no.1 contractor and respondent no.2 company is a sham, nominal and camouflage. Rather PW-2 admitted in cross- examination that respondent no.1 is a canteen contractor of the company and the settlement was entered into between respondent no.1 contractor and the workers of petitioner union. He also admitted in cross-examination that at present he was being paid wages by Madan Lal contractor. No appointment letter/document has been produced in evidence by the petitioner union regarding the fact that they have been employed by respondent no.2 company. Hence, in view of the evidence led by the parties, it cannot be said that the workers of the petitioner union are the employees of respondent no.2 company and the contract between respondent no.2 and respondent no.1 is a sham and nominal as such it has been established that there has been no relationship of employer and employee between the workers of petitioner union and the respondent no.2 company. From the evidence on record it has been clearly established that the canteen workers of the petitioner union are the employees of respondent no.1 contractor.

25. Now, the next question which arises for consideration before this Court is as to whether the demands raised by the petitioner union vide demand charter dated 7.11.2006 Ex. P-6 are reasonable and justifiable. It is not in dispute that the workers of the petitioner union and respondent no.1 had entered into a settlement dated 12.9.1995 Ex. P-3 which was valid for a period of three years and thereafter they entered into another settlement dated 1.3.2005 Ex. P-4 which was valid for a period of five years w.e.f. 1.10.2001 to 30.9.2006. The case of the petitioner union is that after the expiry of the settlement Ex. P-4 on 30.9.2006 the workers approached the respondents for the settlement of their demands but due to adamant attitude of respondents, no settlement had arrived at between the parties and ultimately the workers were forced to file the demand notice through union. PW-1 had tendered in evidence the copy of the demand notice dated 7.11.2006 Ex. P-6, the perusal of which goes to show that the workers through its union had demanded increase in basic pay to the tune of Rs. 2500/-, D.A to Rs. 2000/- , washing allowance to Rs. 300/-, Education allowance to Rs. 500/- heating allowance to Rs. 200/-. There is also a demand to increase LTA by Rs. 1000/- and also to increase loan of all kinds by Rs. 25000/-, the annual allowance to be fixed at Rs. 200/- and bonus be given to the extent of 30%. From the statement of Madan Lal (RW-1), it has become clear that the workers are being paid the same salary/wages which they were getting in the year, 2006. He admitted that demand notice Ex. P-6, had been served upon him by the workers union. From the evidence, which has been referred to above, it is quite clear that there has been no increase in the wages of the workers since, 2006 and the Memorandum of settlement dated 1.3.2005, Ex. P-4, which had come in to operation w.e.f. 1.10.2001 to 30.9.2006, has come to an end.

26. In the order dated 3.5.2017 passed by the Hon'ble High Court in CWP no. 3276 of 2014 it has been held that in the fixation of wages and dearness allowance, the legal position is well established that it has to be done on an industrial-cum region basis having due regard to the financial capacity of the unit under consideration. The relevant portion of the aforesaid judgment is reproduced herein under:

5. It would be clearly evident from the aforesaid that the reasons as given by the learned Labour Court are not legally sound. In the fixation of wages and dearness allowance, the legal position is well established that it has to be done on an industrial-cum region basis having due

regard to the financial capacity of the unit under consideration (Express Newspaper Private Limited Vs Union Of India, AIR 1958 SC 578, Greaves Cotton And Co Ltd Vs Workmen, AIR 1964 SC 689 and Bengal Chemical And Pharmaceutical Works Ltd Vs Workmen, AIR 1969 SC 360).

In (1972) 3 SCC 552 M/s Unicam Laboratory Ltd., Vs. The workmen it has been held as under:

"70. In the fixation of wages and dearness allowance the legal position is well-established that it has to be done on an industry- cum-region basis having due regard to the financial capacity of the unit under consideration-vide Express Newspapers (Private) Ltd., and Another v. The Union of India and others, Greaves Cotton and Co. and others v. Their Workmen and Bengal Chemical & Pharmaceutical Works Ltd. v. Its Workmen."

"76. From the decisions, referred to above, it follows that two principal factors which must weigh while fixing or revising wage scales and grades are: (1) How the wages prevailing in the establishment in question compare with those given to the workmen of similar grade and scale by similar establishments in the same industry or in their absence in similar establishments in other industries in the region; and (2) What wage scales the establishment in question can pay without any undue strain on its financial resources. The same principles substantially apply when fixing or revising the dearness allowance."

27. Therefore, in the light of the aforesaid principles laid down by the Hon'ble Apex Court, it was incumbent upon the petitioner union to lead evidence to show that as to what were the wages prevailing in the establishment in question compare with those given to the workmen of similar grade and scale by similar establishments in the same industry or in their absence in similar establishments in other industries in the region; and also to show as to what wage scales the establishment in question can pay without any undue strain on its financial resources. However, no evidence and material has been placed on record by the petitioner union in order to show as to what were the wages of the canteen workers prevailing in the region or in the similar establishments of the other industries. No evidence has been placed on record by the petitioner union to show the financial capacity of respondent no.1 contractor to pay the wages to the workers without any undue strain on his financial resources. Be that as it may, having regard to the inflation and in the interest of social justice coupled with the object of securing peace and harmony between the employees and employer the wage structure of the canteen workers has to be revised. While deciding about the principles to be followed for fixation of wage structure, the Hon'ble Supreme Court in **AIR 1967 SCC 1175, The Kamani Metals and Alloys Ltd. Vs. The workmen** has held as under:

"7. Fixation of a wage-structure is always a delicate task because a balance has to be struck between the demands of social justice which requires that the workmen should receive their proper share of the national income which they help to produce with a view to improving their standard of living, and the depletion which every increase in wages makes in the profits as this tends to divert capital from industry into other channels thought to be more profitable. The task is not rendered any the easier because conditions vary from region to region, industry to industry and establishment to establishment. To cope with these differences certain principles on which wages are fixed have been stated from time to time by this Court. Broadly speaking the first principle is that there is a minimum wage which, in any event, must be paid, irrespective of the extent of profits, the financial condition of the establishment or the availability of workmen on lower wages. This minimum wage is independent of the kind of industry and applies to all alike big or small. It sets the lowest limit

below which wages cannot be allowed to sink in all humanity. The second principle is that wages must be fair, that is to say, sufficiently high to provide a standard family with food, shelter, clothing, medical care and education of children appropriate to the workman but not at a rate exceeding his wage earning capacity in the class of establishment to which he belongs. A fair wage is thus related to the earning capacity and the workload. It' must, however, be realised that 'fair wage' is not 'living wage' by which is meant a wage which is sufficient to provide not only the essentials above-mentioned but a fair measure of frugal comfort with an ability to provide for old age and evil days. Fair wage lies between the minimum wage, which must be paid in any event, and the living wage, which is the goal. As time passes and prices rise, even the fair wage fixed for the time being tends to sag downwards and then a revision is necessary. To a certain extent the disparity is made up by the additional payment of dearness allowance. This allowance is given to compensate for the rise in the cost of living. But as it is not advisable to have a 100%. neutralisation test it lead to inflation, the dearness allowance is often a little less than 100% neutralisation. In course of time even the addition of the dearness allowance does not sufficiently make up the gap between wages and cost of living and a revision of wages and/or dearness allowance then becomes necessary. This revision is done on certain principles. "

Therefore, in the present case also having regard to the inflation and in view of the judgment of the Hon'ble Apex Court (supra) the demand of the workers to increase the basic salary and dearness allowance is justified. The petitioner has placed on record the memorandum of settlement dated 2.6.2007 arrived at between M/s Gabriel India Ltd., and workmen of Gabriel India Ltd. Hence, in the absence of any other evidence on record, the aforesaid memorandum of settlement dated 2.6.2007 arrived at between the management and the workmen of Gabriel India Ltd. can be taken into consideration to increase the basic salary and dearness allowance of the canteen workers for a period of three years. As observed earlier, the memorandum of settlement dated 1.3.2005 Ex. P-4 has come to an end on 30.9.2006. As per the memorandum of settlement dated 2.6.2007, the basic salary and dearness allowance of the industrial workers of Gabriel India Ltd. has been revised as under:

Settlement benefits: Basic pay will be increased as follows:

W.e.f. 1.10.2005	Rs. 200/- (Two hundred) per month.
W.e.f. 1.1.2006	Rs. 200/- (Two hundred) per month.
W.e.f. 1.6.2007	Rs. 600/- (Six hundred) per month.
W.e.f. 1.6.2008	Rs. 280/- (Two hundred and eighty) per month.
W.e.f. 1.6.2009	Rs. 120/- (One hundred twenty) per month.

Fixed Dearness Allowance (DA).

Increase w.e.f. 1.10.2005 Rs. 150/- (one hundred fifty) per month.

Increase w.e.f. 1.1.2006 Rs. 150/- (one hundred fifty) per month.

Increase w.e.f. 1.6.2007 Rs. 450/- (Four hundred fifty) per month.

Increase w.e.f. 1.6.2008 Rs. 210/- (Two hundred ten) per month.

Increase w.e.f. 1.6.2009 Rs. 90/- (Ninety) per month.

28. Therefore, on the lines of the aforesaid settlement dated 2.6.2007, the basic salary and DA of the canteen workers is also increased for a period of three years w.e.f. 1.10.2006 in the following manner:

Basic pay will be increased as follows:

W.e.f. 1.10.2006 Rs. 200/- (Two hundred) per month.

W.e.f. 1.10.2007 Rs. 600/- (six hundred) per month.

W.e.f. 1.10.2008 Rs. 280/- (Two hundred Eighty) per month.

Fixed Dearness Allowance (DA).

Increase w.e.f. 1.10.2006 Rs. 150/- (One hundred fifty) per month

Increase w.e.f. 1.10.2007 Rs. 450/- (Four hundred Fifty) per month.

Increase w.e.f. 1.10.2008 Rs. 210/- ((Two hundred ten) per month.

In the opinion of this Court the demands for increase in washing allowance, study allowance and heat allowance are also reasonable and justified besides the demands of the workers regarding the increase in the annual leaves which are also justified. Therefore, the workers of petitioner union are held entitled to increase in washing allowance w.e.f. 1.10.2006 at Rs. 80 per year, increase in Education allowance w.e.f. 1.10.2006 at Rs. 100 per year and increase in heat allowance w.e.f. 1.10.2006 at Rs. 25 per year for a period of three years. The workers are also held entitled to increase in annual leaves at par with the instructions/notifications issued by the State Government from time to time, regarding the workers, working in the various establishments. So far as the other demands are concerned no satisfactory and cogent evidence has been led by the petitioner union to justify the same as such the canteen workers of the petitioner union are not entitled for the other demands as per the demand notice Ex. P-6. Hence, both these issues are decided accordingly.

Issue no.3

29. During the course of arguments, this issue was not pressed. Therefore, the same is decided in favour of the petitioner and against the respondents.

Relief.

As a sequel to my findings on issues no.1 and 2 above, the claim filed by the petitioner union succeeds and is partly allowed with the result the workers of the petitioner union are held entitled for the following relief:

Basic pay will be increased as follows:

W.e.f. 1.10.2006 Rs. 200/- (Two hundred) per month.

W.e.f. 1.10.2007 Rs. 600/- (six hundred) per month.

W.e.f. 1.10.2008 Rs. 280/- (Two hundred Eighty) per month.

Fixed Dearness Allowance (DA).

Increase w.e.f. 1.10.2006 Rs. 150/- (One hundred fifty) per month.

Increase w.e.f. 1.10.2007 Rs. 450/- (Four hundred Fifty) per month.

Increase w.e.f. 1.10.2008 Rs. 210/- ((Two hundred ten) per month.

The workers of petitioner union are also held entitled for increase in washing allowance w.e.f. 1.10.2006 at Rs. 80 per year, increase in Education allowance w.e.f. 1.10.2006 at Rs. 100 per year and increase in heat allowance w.e.f. 1.10.2006 at Rs. 25 per year for a period of three years. The workers are also held entitled to increase in annual leaves at par with the instructions/notifications issued by the State Government from time to time, regarding the workers, working in the various establishments. The reference stands answered in the aforesaid terms. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 29th Day of September, 2017.

(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum- Labour Court, Shimla.

4.9.2017.

Present: None for petitioner.
Ms. Kiran Negi, Advocate vice Shri Rahul Mahajan, Advocate for respondent.

Case called twice but none appeared for petitioner. It is 10:50 AM. Be awaited.

(SUSHIL KUKREJA),
Presiding Judge,
Labour Court, Shimla.

Case called again.

Present: None for petitioner.

Ms. Kiran Negi, Advocate vice Shri Rahul Mahajan, Advocate for respondent.

It is 12:45 PM. Case called again but none appeared on behalf of petitioner. Be called after lunch.

(SUSHIL KUKREJA),
Presiding Judge,
Labour Court, Shimla.

Case called after lunch.

Present: None for petitioner.
Ms. Kiran Negi, Advocate vice Shri Rahul Mahajan, Advocate for respondent.

It is 3:20 PM. Case called repeatedly in pre and post lunch sessions but none appeared on behalf of the petitioner before this Court despite the fact that as per Track Consignment report, the notice issued through registered post for the service of the petitioner had been delivered at the addresses given in the reference itself which clearly shows that the petitioner is not interested to pursue his case. Hence, this Court is left with no other alternative but to decide the case on the basis of material whichever is available on file. For, today, the case has been listed for the service of petitioner but despite having been served, the petitioner has failed to appear before this Court. The following reference has been sent by the appropriate government for adjudication to this Court:

"Whether termination of services of Shri Rajeev Thakur S/o Shri Balbeer Singh R/o Village Banad, P.O Gagal Shikore Tehsil Pachhad District Sirmour, HP 173025 by the employer/management of Sun Pharmaceuticals Industries, Village Bata Mandi, Paonta Sahib, District Sirmour, HP w.e.f. 28.9.2015 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified>? If not, what amount of back wages, reinstatement, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer?"

As per the reference, the petitioner has alleged his termination w.e.f. 28.9.2015 to be illegal and unjustified. But, despite having been served none appeared on behalf of petitioner before this Court. Therefore, for the failure of the petitioner to appear before this Court and to pursue the case arising out of reference, it cannot be said that the termination of the services of the petitioner w.e.f. 28.9.2015 is illegal and unjustified. Hence, the reference sent by the appropriate government for adjudication to this Court is answered against the petitioner. Let a copy of this order/award be sent the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced: 4.9.2017.

(SUSHIL KUKREJA),
Presiding Judge,
Labour Court, Shimla.

6.9.2017
Present: Shri Raman Parashar, Advocate for petitioner.
Ms. Sneh Negi, Advocate for respondent.

At this stage, it has been stated by the petitioner that he does not want to pursue the present reference petition bearing number 66 of 2017 and wants to withdraw the same.

Therefore, in view of the aforesaid statement of the petitioner, the reference is answered to be dismissed as withdrawn. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced: 6.9.2017.

(SUSHIL KUKREJA),
Presiding Judge,
Labour Court, Shimla.

7.9.2017

Present: Petitioner in person with Shri Sanjeev Sharma, Advocate.
Shri Joginder Singh, AR for respondent.

At this stage, it has been stated by the petitioner that he had entered into a compromise with the respondent and he is ready and willing to accept ` 55000/- in lieu of full & final settlement of his claim arising out of present reference bearing no. 86 of 2017 and thereafter he shall have no claim against the respondent with respect to his service benefits. To this effect his statement recorded separately.

Vide separate statement, it has been stated by Shri Joginder Singh, AR for the respondent that the company has entered into a compromise with the petitioner and had agreed to pay him a sum of ` 55000/- only in lieu of full & final settlement of his claim. He further stated that he has also handed over three self cheques dated 6.9.2017 drawn on Punjab National Bank, Kala Amb Branch bearing numbers 548718 amounting to ` 5,000, cheque no. 439639 and 439640 both amounting to ` 25000/- each to the petitioner in the Court today in lieu of the aforesaid settlement. Therefore, in view of the aforesaid statements, I am satisfied that a lawful compromise has been effected between the parties. Hence, the reference sent by the appropriate government for adjudication is answered in terms of the aforesaid statements of the parties which shall form a part of this order/award. Let a copy of this award/order be sent to the appropriate government for publication in the official gazette. File, after, completion, be consigned to records.

Announced: 7.9.2017.

(SUSHIL KUKREJA),
Presiding Judge,
H.P.Industrial Tribunal-cum- Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA.

Ref no. 34 of 2016.

Instituted on 12.4.2016.

Decided on 19.9.2017.

Deep Ram alias Duli Chand s/o Sh. Khem Chand, R/o Village Rodi, P.O. Ghaini, Tehsil Sunni, Distt. Shimla, H.P. . .*Petitioner.*

VS.

1. **Executive Engineer, I & PH Division Sunni, Tehsil Sunni, District Shimla, H.P.**
2. Assistant Engineer, I & PH Sub Division Gumma, Tehsil and District Shimla, H.P.

. .*Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri Rajesh Verma, Advocate

For respondents : Ms. Reena Chauhan, Dy. DA.

AWARD

The reference for adjudication, sent by the appropriate government, is as under:

"Whether the alleged termination of the services of Shri Deep Ram alias Duli Chand S/o Sh. Khem Chand, r/o Village Rodi, P.O. Ghaini, Tehsil Sunni, Distt. Shimla, H.P. by the Executive Engineer, I & PH Division, Sunni, Distt. Shimla, (H.P.) w.e.f. 01.01.1997 without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view the delay of more than 10 years in raising the industrial dispute and working period of only 37 ½ days and 7 days during the years 1995 & 1996 respectively, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer? "

2. Briefly, the case of the petitioner is that on 1.1.1994, he was appointed as beldar on daily wages and posted at IPH section Jubber under Sub Division Gumma and he discharged his duties sincerely to the full satisfaction of his employer and completed more than 240 days in each calendar year but his services were orally terminated on 31.12.1996 without assigning any reason and that the other persons who were working with the petitioner and his juniors were allowed to continue in the service in violation of sections 25-G, 25-H and 25-N of the Industrial Disputes Act, 1947 (hereinafter referred as to Act). It is further stated that after the termination of the services of the petitioner, the respondents engaged 80 persons junior to him and the request of petitioner was not heeded to by the respondents and thereafter the petitioner raised demand notice but the Labour Commissioner had declined to make the reference and then he (petitioner) filed CWP no. 4469/2015 before the Hon'ble High Court in which the Labour Commissioner was directed to refer the case of petitioner for adjudication before this Court. It is also stated that the services of the petitioner have been terminated without giving any notice is in violation of the provisions of section 25-F of the Act. Against this back drop it has been prayed that he be reinstated in service will all the consequential benefits including full back-wages by quashing and setting aside the verbal and illegal termination order of the petitioner.

3. By filing reply, the respondents contested the claim of the petitioner wherein preliminary objections have been taken qua maintainability and that the claim petition is time barred. On merits, it has been admitted that the petitioner was engaged as daily wages beldar under IPH section Durgapur w.e.f. 16.2.1995 to 31.12.1996. It is denied that the petitioner was appointed on 1.1.1994 in Jubber section. It is asserted that the petitioner had never completed 240 days in a calendar year and his services were never terminated by the department and he left the job at his own will and that as and when there was work available with the respondents, he was duly informed vide office letters dated 16.9.1997 and 7.10.1997 vide which he was asked to report for duty but he did not report which clearly shows that he was not interested to work with the department. It is further asserted that during the entire service period of the petitioner, he had worked for 122 ½ days and he had filed the present claim petition after a gap of more than 13 years without mentioning any cogent reason for the delay. It is also asserted that no junior person to the petitioner had been engaged in Durgapur section and as such the department had not violated the provisions of section 25-H, 25-G, 25-N and 25-F of the Act. The respondents prayed for the dismissal of the claim petition.

4. By filing rejoinder, the petitioner reaffirmed his allegations by denying those of the respondent.

5. On the pleadings of the parties, the following issues were framed on 3.3.2017.

1. Whether the termination of the services of the petitioner by the respondents w.e.f. 1.1.1997 without complying with the provisions of Industrial Disputes Act, 1947 is illegal and unjustified as alleged? . .*OPP.*

2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? . .*OPP.*

3. Whether the claim petition is not maintainable as alleged? . .*OPR.*

4. Whether the petitioner is not a workman? . .*OPR.*

5. Whether the claim petition is time barred? . .*OPR.*

6. Relief.

6. I have heard the learned counsel for the parties and have also gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue no.1 No.

Issue no.2 Becomes redundant.

Issue no.3 No.

Issue no.4 Not pressed.

Issue no.5 Yes.

Relief. Reference answered in favour of the respondents and against the petitioner per operative part of award.

Reasons for findings

Issues no.1 & 5 .

8. Being interlinked and correlated, both these issues are taken up together for decision.

9. The learned counsel for the petitioner contended that the services of the petitioner had been terminated by the respondents illegally without serving him any notice as required under section 25-F of the Act especially when he had completed more than 240 days in each calendar year. He further contended that the junior persons to the petitioner are still working with the respondent and fresh workers have been engaged in violation of the provisions of section 25-G and 25-H of the Act.

10. On the other hand, Ld. Dy. DA for the respondents contended that the claim of the petitioner is highly belated and stale. She further contended that the services of the petitioner had never been terminated by the respondents who had left the job at his own and even he had not completed 240 days in any calendar year. She also contended that no junior to the petitioner had been retained and no fresh hands had been engaged by the respondents, hence, he is not entitled to any relief.

11. To prove issue no.1, the petitioner stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A wherein he reiterated almost all the averments as stated in the claim petition. He also tendered in evidence the information Ex. PW-1/B obtained under RTI Act from the office of Executive Engineer IPH Sunni and demand notice Ex. PW-1/C. In cross-examination, he denied that he was engaged in the year, 1995 and that he had worked for only 122 days. He further denied that he had left the job at his own and that the department had written the letters to him for resumption of his duties but despite that he had not turned up. He also denied that his services were not orally terminated by the respondents and that he had never approached the respondents for his re-engagement. He denied that no junior was retained in Durgapur section of IPH. He admitted that he had raised industrial dispute after 13 years.

12. PW-2 Shri Narinder Kumar, Senior Assistant has brought the detail of persons engaged as beldars in IPH Division Sunni on and after 1.1.1994 to 31.12.2007 Ex. PW- 2/A. In cross-examination he admitted that Sub Divisions Kumarsain, Kotgarh, Gumma and Sunni falls under Sunni Division and Durgapur section falls under Sub Division Gumma and the detail Ex. PW-2/A has not been prepared sub division wise.

13. On the other hand, the respondents examined one Shri Dinesh Bhardwaj, Assistant Engineer as RW-1 who tendered in evidence his affidavit Ex. RW-1/A wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence the copy of mandays chart of petitioner Ex. RW-1/B, letter dated 7.10.1997 Ex. RW-1/D and copy of order passed by the Hon'ble High Court in CWP no. 4382 of 2015 Ex. Rw-1/E. In cross-examination, he admitted that the petitioner was engaged as beldar. He denied that the cadre of beldar is divisional. He further denied that the services of the petitioner were illegally terminated. He admitted that six persons have been engaged after 31.12.1996 but volunteered that they have been engaged on compassionate ground.

14. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that the petitioner had worked only for 122 ½ days as daily waged beldar with the respondents during the entire period w.e.f. 16.2.1995 till 28.2.1995 as per the mandays chart Ex. RW-1/B. Now, the question which arises for consideration before this Court is as to whether the reference is stale and highly belated. The learned counsel for the petitioner contended that under the Industrial Disputes, no limitation is prescribed and the provision of Article 137 of the Limitation Act 1963 is not applicable to the proceedings under the Act and the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay.

15. Undisputedly, the petitioner had raised his industrial dispute after a period of more than 10 years. According to the petitioner his services were terminated w.e.f. 1.1.1997. It is also clear from the reference itself that the petitioner had raised the industrial dispute after more than 10 years. Therefore, the position of law in respect of a stale claim is required to be seen.

16. In (2013) 14 SCC 543, titled as Assistant Engineer Rajasthan State Agriculture Marketing Board, Sub Division Kota Vs. Mohan Lal, it has been held by the Hon'ble Apex Court that though the Limitation Act is not applicable to the reference made under the I.D Act but delay in raising industrial Dispute is an important circumstance for exercise of judicial discretion in determining relief that is to be granted. The relevant portion of aforesaid judgment is reproduced as under:

"19. We are clearly of the view that though the Limitation Act, 1963 is not applicable to the reference made under the ID Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of

discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in Gitam Singh that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed."

17. In Assistant Executive Engineer, Karnataka Vs. Shivalinga reported in (2002) 10 SCC 167, the services of the employee were terminated on 25.5.1985 and he approached the Labour Officer on 17.3.1995 and then the reference was made by the Government to the Labour Court. There was a delay of more than nine years in approaching the Labour Officer. In para 6 of the aforesaid judgment, the Hon'ble Apex Court has held as under:

"Learned counsel for the appellant strongly relied on the reasoning of the Labour Court and contended that the view of the High Court would not advance the cause of justice. Learned counsel for the respondent relied upon two decisions of this Court in Ajaib Singh vs. Sirhind Coop. Marketing-cum- Processing Service Society Ltd. (1999) 6 SCC 82 and Sapan Kumar Pandit vs. U.P. SEB (2001) 6 SCC 222 to contend that there is no period of limitation prescribed under the Industrial Disputes Act to raise the dispute and it is open to a party to approach the Court even belatedly and the Labour Court or the Industrial Tribunal can properly mould the relief by refusing or awarding part-payment of back wages. It is no doubt true that in appropriate cases, as held by this Court in the aforesaid two decisions, such steps could be taken by the Labour Court or the Industrial Tribunal, as the case may be, where there is no such dispute to relationship between the parties as employer and employee. In cases where there is a serious dispute, or doubt in such relationship and records of the employer become relevant, the long delay would come in the way of maintenance of the same. In such circumstances to make them available to a Labour Court or the Industrial Tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim to have become stale. That is exactly the situation arising in this case. In that view of the matter, we think the two decisions relied upon by the learned counsel have no application to the case on hand."

Thus, it has been held that in case there is a serious dispute or doubt in such relationship and the records of the employer become relevant, the long delay would come in the way of maintenance of the same.

18. In Haryana State Coop. Land Development Bank Vs. Neelam reported in (2005) 5 SCC 91, the employee was discontinued from service w.e.f. 30.5.1986 and he raised the demand notice on 30.9.1993 and thereafter the reference was sent to the Labour court by the appropriate government. The Labour Court passed an order answering the reference against the employee holding that the claim was belated. Thereafter, a writ petition was filed before the Hon'ble High Court which was allowed and the employee was directed to be reinstated in service with continuity of service but without back-wages. The Hon'ble Supreme Court set aside the judgment of the High Court and restored the judgment of the Labour Court as a result the reference stood answered against the workman. The relevant portion of the aforesaid judgment is reproduced as under:

13. "In Ajaib Singh (supra), the management did not raise any plea of delay. The Court observed that had such plea been raised, the workman would have been in a position to show the circumstances which prevented him in approaching the Court at an earlier stage or even to satisfy the Court that such a plea was not sustainable after the reference was made by the Government. In that case, the Labour Court granted the relief, but the same was denied to the workman only by the High Court. The Court referred to the purport and object of enacting

Industrial Disputes Act only with a view to find out as to whether the provisions of the Article 137 of the Schedule appended to the Limitation Act, 1963 are applicable or not. Although, the Court cannot import a period of limitation when the statute does not prescribe the same, as was observed in Ajaib Singh (supra), but it does not mean that irrespective of facts and circumstances of each case, a stale claim must be entertained by the appropriate Government while making a reference or in a case where such reference is made the workman would be entitled to the relief at the hands of the Labour Court."

14. "The decision of Ajaib Singh (supra) must be held to have been rendered in the fact situation obtaining therein and no ratio of universal application can be culled out therefrom. A decision, as is well-known, is an authority of what it decides and not what can logically be deduced therefrom Bharat Forge Co. Ltd. Vs. Uttam Manohar Nakate, JT 2005 (1) SC 303], and Kalyan Chandra Sarkar vs. Rajesh Ranjan @ Pappu Yadav & Anr. para 42."

15" In Balbir Singh vs. Punjab Roadways and Another [(2001) 1 SCC 133], as regard Ajaib Singh (supra), this Court observed :

5." The learned counsel for the petitioner strenuously urged that the Tribunal committed error in denying relief to the workman merely on the ground of delay. The learned counsel submitted that in industrial dispute delay should not be taken as a ground for denying relief to the workman if the order/orders under challenge are found to be unsustainable in law. He placed reliance on the decision of this Court in the case of Ajaib Singh v. Sirhind Coop. Marketing-cum-Processing Service Society Ltd. ((1999) 6 SCC 82 : 1999 SCC (L&S) 1054 : JT (1999) 3 SC 38).

6. "We have carefully considered the contentions raised by the learned counsel for the petitioner. We have also perused the aforementioned decision. We do not find that any general principle as contended by the learned counsel for the petitioner has been laid down in that decision. The decision was rendered on the facts and circumstances of the case, particularly the fact that the plea of delay was not taken by the management in the proceeding before the Tribunal. In the case on hand the plea of delay was raised and was accepted by the Tribunal. Therefore, the decision cited is of little help in the present case. Whether relief to the workman should be denied on the ground of delay or it should be appropriately moulded is at the discretion of the Tribunal depending on the facts and circumstances of the case. No doubt the discretion is to be exercised judicially."

16. "Yet again in Assistant Executive Engineer, Karnataka vs. Shivalinga [(2002) 10 SCC 167], a Bench of this Court observed :

"6. Learned counsel for the appellant strongly relied on the reasoning of the Labour Court and contended that the view of the High Court would not advance the cause of justice. Learned counsel for the respondent relied upon two decisions of this Court in Ajaib Singh vs. Sirhind Coop. Marketing-cum- Processing Service Society Ltd. (1999) 6 SCC 82 and Sapan Kumar Pandit vs. U.P. SEB (2001) 6 SCC 222 to contend that there is no period of limitation prescribed under the Industrial Disputes Act to raise the dispute and it is open to a party to approach the Court even belatedly and the Labour Court or the Industrial Tribunal can properly mould the relief by refusing or awarding part-payment of back wages. It is no doubt true that in appropriate cases, as held by this Court in the aforesaid two decisions, such steps could be taken by the Labour Court or the Industrial Tribunal, as the case may be, where there is no such dispute to relationship between the parties as employer and employee. In cases where there is a serious dispute, or doubt in such relationship and records of the employer become relevant, the long delay would come in the way of maintenance of the same. In such circumstances to make them available to a Labour Court or the Industrial Tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim to have become stale. That is exactly the situation arising in this case. In that view of the matter, we think the two decisions relied upon by the learned counsel have no application to the case on hand."

17. "In Nedungadi Bank Ltd. (supra), a Bench of this Court, where S. Saghir Ahmad was a member [His Lordship was also a member in Ajaib Singh (supra) , opined :

"6. Law does not prescribe any time-limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after a lapse of about seven years of the order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject-matter of reference under Section 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made."

(Emphasis supplied).

19. In (2006) 5 SCC 433 in case titled as UP State Road Transport Corporation Vs. Babu Ram, the termination was dated 19.9.1983 and the reference was made on 29.8.1998. The Labour Court has held the termination as un-valid without considering the question of delay. The Hon'ble High Court dismissed the writ petition. The Hon'ble Supreme Court has held that no material was placed on record to show that the dispute was raised within reasonable time and the employee was not responsible for delay. The relevant portion of the aforesaid judgment is reproduced as under:

"10. It is to be noted that the High Court has very cryptically disposed of the writ petition. The workman has not placed any material to show that it had raised dispute within a reasonable time, and/or that he was not responsible for delayed decision if any in the conciliation proceedings. It was for him to show that the dispute was raised within a reasonable time and that he was not responsible for any delay. The High Court, on a hypothetical basis has assumed that the dispute might have been raised promptly but delayed by the State Government and he cannot be penalized for delay in finalizing the conciliation proceedings and the reference. But neither the Labour Court nor the High Court has even noted the factual position. The conclusion was based on surmises and conjectures."

20. In Assistant Engineer, CAD Kota Vs. Dhan Kunwar reported in (2006) 5 SCC 481, the delay was of about eight years in raising the dispute. The Labour Court granted reinstatement with 30 % back-wages. The writ petition and writ appeal filed by the employer were dismissed. However, the Hon'ble Apex Court set aside the judgments of Hon'ble High Court and the Labour Court and held that no relief should have been granted. The relevant portion of the aforesaid judgment is reproduced herein under:

"9. In the background of what has been stated above, the Labour Court should not have granted relief. Unfortunately, learned Single Judge and the Division Bench did not consider the issues in their proper perspective and arrived at abrupt conclusions without even indicating justifiable reasons……..

21. In UP State Road Transport Corporation Vs. Ram Singh and another (2008) 17 SCC 627, the termination was dated 15.3.1973 and the reference was dated 15.6.1986 and there was a delay of about 13 years in making the reference. The reference was dismissed on the ground of delay. The relevant portion of the aforesaid judgment reads as under:

" 7. We are of the view that in the facts and circumstances of the case, the High Court erred in not setting aside the award of the Labour Court. Apart from the unacceptable manner in which the appellant was denied the opportunity of participating in the proceedings, including being

debarred from cross-examining the respondent, the Labour Court could not have entertained the industrial dispute given the enormous delay. This Court has in several decisions has held that while delay cannot by itself be sufficient reason to reject an industrial dispute, never the less the delay cannot be un-reasonable. The decision in Prakash Chander Sahu has reaffirmed this principal. The reason for diligence and promptness lies in the fact that the records pertaining to an employee might have been destroyed and it would be difficult to obtain witnesses who would be competent to give evidence so many years later if the Labour Court wishes to hold a further enquiry into the matter. In the present case, the delay of 13 years is unreasonable. The mere fact that the respondent was making repeated representations would not justify his raising the issue before the Labour Court after 13 years. In any event, the last representation was made in 1983 and the industrial dispute was admittedly raised in 1986. The lack of diligence on the part of the respondent is apparent. "

23. In (2009) 13 SCC 746, State of Karnataka Vs. Ravi Kumar the Hon'ble Supreme Court dismissed the reference on the ground of delay and it was held that the person supervising could not be expected to prove after 14 years that the employee did not work or that he did not work for 240 days or he voluntarily left the job. The relevant portion of the aforesaid judgment reads as under:

"9. It is not possible to expect the Asstt. Executive Engineer to prove after 14 years that the daily wager did not work or that he did not work for 240 days in a year or that the daily wager voluntarily left the work……

23. In a recent judgment of our **Hon' ble Hi gh Court del iver ed i n CWP no. 1 912 of 2016 titled as Bego Devi Versus State of HP and others decided on 26.10.2016**, it has been held as under:

"9. It is beaten law of land that delay takes away the settings of law. A person who does not seek relief within time, his petition has to be dismissed only on the grounds of delay and laches, otherwise, it would amount to gross misuse of jurisdiction and disturb the settled position".

24. In view of the aforesaid law laid down by the Hon'ble Apex Court, it is clear that though the Court cannot import the period of limitation and the reference cannot be dismissed merely on the ground of delay, it does not mean that irrespective of the facts and circumstances of the case, a stale claim must be entertained and the relief should be granted. In the case of delay, no formula of universal application can be laid down and it would depend on the facts and circumstances of each case. The delay would certainly be fatal if it has resulted in material evidence relevant to the adjudication being lost and rendered unavailable. The onus of showing that the dispute was raised within a reasonable time is upon the workman and it is for the workman to explain the delay by furnishing the acceptable explanation to the satisfaction of the Court that he was not responsible for the delay caused. The fact that the workman was making repeated representations/requests is not sufficient to explain the delay.

25. Keeping in view the aforesaid principles laid down by the Hon'ble Apex Court, the facts of this case are required to be seen. The services of the petitioner were stated to be terminated w.e.f. 1.1.1997 and he raised the present dispute after a period of more than 10 years. In the his evidence by way of affidavit Ex. PW-1/A, the petitioner has stated that after his termination he visited the office of the respondent no.2 and requested them to re-engage him in service but his requests were never considered by the respondents . However, except for his bald statement there is no other evidence on record to suggest as to when the respondents had given him the assurance for re-engagement. No documentary evidence has been produced by the petitioner to prove that he

had been visiting the respondents for his re-engagement during the period of 10 years. In the opinion of this Court, the explanation furnished by the petitioner for not raising the demand notice within a reasonable period cannot be accepted. The burden of proof was upon the petitioner to show that the dispute was raised within a reasonable time and to offer an explanation to the satisfaction of this Court for the delay of 10 years caused in seeking reference but the petitioner has failed to discharge his burden. The reference is therefore stale and is liable to be rejected on the ground of delay in raising the dispute.

26. On merits, from the mandays Ex. RW-1/B, it is clear that the petitioner was engaged as daily waged beldar by the respondents on 16.2.1995 and he worked as such till 31.12.1996 for a period of 122 ½ days. The petitioner has failed to prove on record that he had worked for 240 days in preceding twelve months prior to his termination. There is no material on record which could show that the petitioner has completed 240 working days in twelve calendar months preceding his termination. In ***2009 (120) FLR 1007 incase titled as Relip Nagarpalika Vs. Babuji Gabhaji Thakore and others*** , the Hon'ble Supreme Court has held as under:

"The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer."

In ***AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat V/s Dayabhai Amar Singh, the*** Hon'ble Supreme Court has held that:—

"Incase workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated."

A bare perusal of the extract of the judgment re-produced, hereinabove, shows that the burden to prove completion of 240 days service lies on the workman and this burden is discharged on workman stepping in the witness box and adducing cogent evidence. However, in the instant case, the petitioner has failed to prove on record that he had put in 240 days in twelve calendar months preceding his termination. There is no iota of evidence which could go to show that the petitioner had completed 240 working days in twelve calendar months preceding his termination. Hence, the case of the petitioner does not fall under section 25-F of the Industrial Disputes Act, 1947 and as such no protection of section 25-F can be granted to the petitioner.

27. The learned counsel for the petitioner next contended that at the time of the termination of the petitioner, the respondents had retained his juniors and had engaged fresh hands who are still working as such the respondents had violated the principles of "last come first go". In his deposition, Shri Narinder Kumar PW-2, has tendered in evidence the detail of persons engaged as beldars in IPH Division Sunni on and after 1.1.1994 to 31.12.2007 Ex. PW-2/A. However, no credence can be attached to Ex. PW-2/A because the register on the basis of which the same has been prepared has not been signed by any official who had prepared the same. PW-2 admitted in cross-examination that the original register has not been signed by any official who had prepared the same. Moreover, it is not disputed that the petitioner was engaged under Durgapur section which falls under sub division Gumma. It is also not disputed that sub divisions Gumma, Kumarsain, Kotgarh and Sunni falls under Sunni Division. However, the petitioner has failed to produce any evidence on record to show that as to how many juniors have been retained

by the respondents in Durgapur section of sub division Gumma. In cross-examination, RW-1 had admitted that only six persons have been engaged in sub division Gumma after 31.12.1996 that too on compassionate grounds. Furthermore, as observed earlier, the petitioner had raised the demand notice after a period of 10 years as such there is no question of consideration of equal treatment with the junior persons who have allegedly been shown in Ex. PW-2/A. To take this view, I am fortified with the judgment of our own **H on'bl e Hi gh Court i n CWP no. 4515/ 2012 decided on 13.6.2012, titled as Suraj Mani Vs. HPSEB** wherein it has been held that the petitioners cannot claim equal treatment after about two decades with the juniors who have allegedly been retained. The petitioner who slept for a long period of 10 years is not entitled to claim any relief on the ground of equal treatment. Since, the reference has been proved to be stale and belated as such the protection of sections 25-G and 25-H of the Act cannot be granted to the petitioner. If the alleged termination of petitioner was either illegal or unjustified, he would not have kept silent for a period of 10 years. It has also come in evidence on record that the petitioner had left the job at his own will. The perusal of the letters dated 16.9.1997 Ex. RW-1/C and dated 7.10.1997 Ex. RW-1/D shows that the petitioner was asked to report for duties but despite that he did not report which clearly shows that he was not interested to do the work with the respondents. The petitioner did not join the duties when the work was available and in this respect he was duly informed by the respondents therefore it can safely be held that the petitioner had voluntarily abandoned the job.

28. Thus, keeping in view the above cited rulings and the material fact that the petitioner had raised the industrial dispute after lapse of about 10 years and remained silent during this period without any plausible explanation and had left the job voluntarily as such no relief can be granted to him. Hence, it cannot be said that the termination of the services of the petitioner is illegal and unjustified. Consequently, both these issues are answered accordingly.

Issue no.2.

29. Since, the petitioner has failed to prove issue no.1, above, this issue becomes redundant.

Issue no.3.

30. In support of this issue, no evidence has been led by the respondents. However, the petitioner has filed this claim petition pursuant to the reference made by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondents.

Issue no.4.

31. During the course of arguments, this issue was not pressed by the learned Dy. DA for respondents. Hence, the same is decided in favour of petitioner and against the respondents.

Relief.

As a sequel to my findings on the aforesaid issues, the claim of the petitioner fails and is hereby dismissed. Consequently, the reference stands answered against the petitioner and in favour of the respondents. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records. Announced in the open Court today on this 19th Day of September, 2017.

(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA.

Ref no. 51 of 2016.

Instituted on 3.6.2016

Decided on 13.9.2017.

Raghuvir Singh Chauhan S/o Sh. Ram Chand Chauhan Forest Worker Tharoch Range Chopal Division, District Shimla and resident of village Bijman P.O. Keti, Tehsil Chopal District Shimla, H.P. . .*Petitioner.*

VS.

1. **Secretary Forest, State of H.P. H.P. Secretariat, Shimla-2**
2. Conservator of Forest, Forest Department, Circle Shimla, Shimla-2
3. D.F.O. Chopal, Tehsil Chopal District Shimla, H.P.
4. Deputy Ranger, Forest Department Chopal, Tehsil Chopal District Shimla.

. .*Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Tek Chand Sharma, Advocate.

For respondents : Ms. Reena Chauhan, Dy. DA.

AWARD

The reference for adjudication, sent by the appropriate government, is as under:

"Whether alleged termination of services of Shri Raghuvir Singh S/o sh. Ram Chand R/o Village Bijmal, P.O. Kedi, Tehsil Chopal, Distt. Shimla, H.P. during December, 2001 by the Divisional Forest Officer, Chopal, who had worked as beldar on daily wages only for 59 days & 20 days only in the years 2000 & 2001 respectively and has raised his industrial dispute after about more than 7 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 59 days & 20 days only in the years 2000 &2001 respectively and delay of more than 7 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer?"

2. Briefly, the case of the petitioner is that w.e.f. 4.11.1999, he was appointed as beldar on daily wages basis by the respondents at Bamta Range Office, Chopal and lateron he was ordered to do the work of fire watcher, closer by forest guard and Gardner etc at Puria Block, Tharoach, Mashrahan, Chauri Forest Beat etc. and his services were orally terminated on 8.7.2005 and that the services of the petitioner were continuous for the purpose of section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred as to Act) as he had worked for more than 240 days in each calendar year and that at the time of his termination, the services of the juniors have been retained in violation of section 25-G of the Act . It is further stated that the work and conduct of the petitioner was excellent during his service as no notice calling his explanation was ever served upon him. It is also asserted that the act of the respondents in terminating his services without following proper procedure is liable to be declared illegal. Against this back-drop

a prayer has been made that the respondents be directed to re-engage the services of the petitioner considering the seniority along-with full back-wages.

3. By filing reply, the respondents contested the claim of the petitioner wherein preliminary objection has been taken that the petitioner was engaged as daily rated casual labourer during 2000 in Tharoach Range of Chopal Forest Division on seasonal forestry works as per availability of works and funds and the petition filed by the petitioner deserves to be dismissed on the ground of delay. On merits, it has been asserted that the petitioner had worked only for 76 days in the year 2000 and 75 days in the year, 2001 and neither he had completed 240 days in each calendar year nor returned back to the forestry works and that he had left the work on his own sweet will, hence the provisions of section 25-B and 25-G of the Act are not applicable. That the daily wagers who have completed prescribed criteria of HP Government Policy with completion of minimum 2410 days in each calendar year were to be considered for continuous work with the department. The respondents prayed for the dismissal of the claim petition.

4. By filling rejoinder, the petitioner reaffirmed his allegations by denying those of the respondents.

5. On the pleadings of the parties, the following issues were framed on 4.3.2017.

1. Whether the termination of the services of petitioner by the respondents during December, 2001 without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged? . .*OPP.*

2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? . .*OPP.*

3. Whether the claim petition is time barred as alleged? . .*OPR.*

4. Relief.

6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue no.1 No.

Issue no.2 Becomes redundant.

Issue no.3 Not pressed.

Relief. Reference answered in favour of the respondents and against the petitioner per operative part of award.

Reasons for findings

Issues no.1.

8. The learned counsel for the petitioner contended that the services of the petitioner had been terminated by the respondents illegally without serving him any notice as required

under section 25-F of the Act especially when he had completed more than 240 days in each calendar year. He further contended that the junior persons to the petitioner are still working with the respondents and fresh workers have been engaged in violation of the provisions of section 25-G and 25-H of the Act.

9. On the other hand, Dy. DA for the respondents contended that the claim of the petitioner is highly belated and stale. She further contended that the services of the petitioner had never been terminated by the respondents who had left the job at his own and even he had not completed 240 days in preceding twelve months. She also contended that no junior to the petitioner had been retained and no fresh hands had been engaged by the respondents, hence, he is not entitled to any relief.

10. To prove issue no.1, the petitioner stepped into the witness box as PW-1 to depose that he was appointed as a beldar on daily wages basis with the respondent on 4.11.1999 at Bamta Range Office and later on he had worked at Puria Block, Tharoach, Mashrahan and Chauri forest beat. He further deposed that as per mark PX, he had completed 240 days in a calendar year and his services have been orally terminated on 8.7.2005 and that after his termination, some juniors as per Ex. PW-1/A were retained by the department and some of the juniors have been regularized by the department. He also deposed that no notice or any compensation was paid to him before his termination. In cross-examination, he denied that he was engaged as a casual labourer in the year 2000 and that he had only worked for 76 days in the year 2000 and 75 days in the year, 2001. He further denied that he had not completed 240 days in a calendar year and that he had left the job at his own in the year, 2001. He also denied that his services were never terminated by the respondents on 8.7.2005 and that no juniors were retained by the respondents.

11. PW-2 Shri Jeet Singh, Forest Guard deposed that the petitioner had worked under Tharoach and Shila beat as a daily wager and he was also working as fire watcher in the aforesaid beats and that the certificate Ex. PW-2/A has been issued by him at the instance of Range Officer. In cross-examination, he denied that he had wrongly issued the certificate Ex. PW- 2/A in favour of the petitioner. He admitted that no order in writing was passed by the Range Officer directing him to issue the certificate Ex. PW-2/A.

12. On the other hand, the respondents examined one Shri Sunil Dutt, Range Forest Officer as RW-1 who tendered in evidence his affidavit Ex. RW-1/A wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence the copy of mandays chart of the petitioner Ex. RW-1/B. In cross-examination, he admitted that the record pertaining to Forest Range Tharoach has been burnt and in this respect a letter Ex. P-1 has been given to the petitioner under RTI Act. He admitted that no enquiry was conducted against the petitioner regarding his willful absence.

13. I have closely scrutinized the entire evidence on record and from the closer scrutiny thereof, the first question which arises for consideration before this Court is as to whether the petitioner has completed 240 days in each calendar and in twelve calendar months preceding his termination. The case of the petitioner is that he had completed 240 days in the calendar years 2000 and 2002 and in this respect he had relied upon the certificate Ex. PW-2/A issued by PW-2 Shri Jeet Singh who was working as a forest guard. However, no credence can be attached to the aforesaid certificate Ex. PW-2/A because the same has not been issued by any competent authority. Though, PW-2, the then Forest Guard had stated that the aforesaid certificate has been issued by him at the instance of Range Forest Officer but no document has been produced on record by him to show that he was authorized by the Range Forest Officer to issue the aforesaid certificate. He admitted in cross-examination that no order in writing was passed by the Range Forest Officer directing him to issue the certificate Ex. PW-2/A. Moreover, he deposed that

the aforesaid certificate was issued by him on the basis of muster roll and seniority register but in cross-examination he admitted that he had not seen the muster roll and seniority register in the Court. Furthermore, the working days for the months of June to September, 2000 are not legible which are mentioned in the certificate Ex. PW-2/A. Therefore, as the certificate has not been issued by PW-2 in the discharge of his official duties and he was not competent to issue the same, it cannot be relied upon. Hence, no benefit can be derived by the petitioner from the certificate Ex. PW-2/A to claim that he had completed 240 days in a calendar year. Except for the aforesaid certificate Ex. PW-2/A, no other evidence has been led by the petitioner to prove that he had worked for 240 days in a calendar year and in preceding twelve months prior to his termination. In ***2009 (120) FLR 1007 incase titled as Relip Nagarpalika Vs. Babuji Gabhaji Thakore and others***, the Hon'ble Supreme Court has held as under:

"The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer."

In ***AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat V/s Dayabhai Amar Singh, the*** Hon'ble Supreme Court has held that:-

"Incase workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated."

A bare perusal of the extract of the judgment re-produced, hereinabove, shows that the burden to prove completion of 240 days service lies on the workman and this burden is discharged on workman stepping in the witness box and adducing cogent evidence. However, in the instant case, the petitioner has failed to prove on record by leading cogent evidence that he had put in 240 days in twelve calendar months preceding his termination. There is no cogent and satisfactory evidence which could go to show that the petitioner had completed 240 working days in twelve calendar months preceding his termination. On the other hand, RW-1 had tendered in evidence the mandays chart Ex. RW-1/B, the perusal of which shows that the petitioner had worked only for 151 days w.e.f 21.4.2000 till 20.12.2001. Hence, the case of the petitioner does not fall under section 25-F of the Industrial Disputes Act, 1947 and as such no protection of section 25-F can be granted to the petitioner.

14. The learned counsel for the petitioner next contended that the respondents had retained the juniors of the petitioner in service and some of them have been regularized in violation of the provisions of section 25-G of the Act. The case of the respondents is that the petitioner was engaged as a casual labourer on seasonal basis as per the availability of works and funds and he did not complete the prescribed criteria for regularization as per the policy of the State Government. In his deposition before the Court, the petitioner produced on record the letter Ex. PW-1/A obtained under RTI Act wherein the name of daily wagers deputed in Forest Division Chopal w.e.f. 1.1.1999 to 31.12.2015 have been given. However, in cross-examination he had feigned ignorance to the suggestion that only those persons have been regularized who have completed eight years of continuous service as per the policy of the State Government. The names of the persons mentioned in letter Ex. PW-1/A has also been reproduced by the petitioner in para 4 of the claim petition and in cross-examination RW-1 categorically stated that before the Court that the persons mentioned in para 4 of the claim petition have been deployed in other ranges. Meaning

thereby that the persons mentioned in letter Ex. PW-1/A are not of the range in which the petitioner was working as such the petitioner cannot derive any benefit from the letter Ex. PW-1/A. Moreover, except for the letter Ex. PW-1/A, no other evidence has been led by the petitioner to show that the persons junior to him have been retained by the respondents. No official record has been produced by the petitioner regarding the date of appointment of the persons mentioned in the letter Ex. PW-1/A. It was incumbent upon the petitioner to have either summoned or produced the official record of Chopal Forest Division regarding the appointment of the persons mentioned in the letter Ex. PW-1/A. However, for the reasons best known to the petitioner the same has not been produced before this Court. In the opinion of this Court only on the basis of the letter Ex. PW-1/A it cannot be said that the juniors have been retained by the respondents. Even, the letter Ex. PW-1/A has not been proved on record by the petitioner in accordance with law as the person who had issued the same has not been produced in the witness box by the petitioner. Therefore, in the absence of any cogent and satisfactory evidence on record it cannot be said that the respondents had retained the juniors of the petitioner and some of them have been regularized. The petitioner has also failed to prove on record that the persons who have been regularized have not completed eight years of continuous service as per the policy of the Government. Hence, keeping in view the entire evidence on record, the petitioner has failed to prove that the respondents have violated the provisions of section 25-G of the Act.

15. Therefore, in view of my foregoing discussion and also keeping in view the entire evidence on record, it cannot be held that the services of the petitioner have been illegally terminated during December, 2001 by the respondents without complying with the provisions of the Act. Accordingly, this issue is decided in favour of the respondents and against the petitioner.

Issue no.2.

16. Since, the petitioner has failed to prove issue no.1, above, this issue becomes redundant.

Issue no.3.

17. During the course of arguments, this issue was not pressed by the Dy. DA for the respondents. Therefore, the same is decided in favour of the petitioner and against the respondents.

Relief.

As a sequel to my findings on the aforesaid issues, the claim of the petitioner fails and is hereby dismissed. Consequently, the reference stands answered against the petitioner and in favour of the respondents. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 13th Day of September, 2017.

(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

शहरी विकास विभाग

अधिसूचना

शिमला–2, 05 फरवरी, 2018

संख्या यू0डी0ए0(1)–4 / 2016.––हिमाचल प्रदेश के राज्यपाल , हिमाचल प्रदेश नगरपालिका निर्वाचन नियम, 2015 के नियम 90 के उप नियम (6) के साथ पठित हिमाचल प्रदेश नगरपालिका अधिनियम, 1994 (1994 का अधिनियम संख्यांक 13) की धारा 27 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, जिला मण्डी में नगर परिषद मण्डी की बाबत अध्यक्ष के निर्वाचन को निम्न प्रकार से राजपत्र मे अधिसूचित करते हैं:–

नगर पालिका परिषद / नगर पंचायत का नाम	निर्वाचित अध्यक्ष का नाम और पता
नगर परिषद, मण्डी	श्रीमति सुमन ठाकुर, वार्ड न0 05, नगर परिषद, मण्डी जिला मण्डी हि0प्र0।

आदेश द्वारा,
तरून कपूर,
अतिरिक्त मुख्य सचिव (शहरी विकास)।

———————

[Authoritative English Text of notification No.UD-A(1)-2/2016, dated 05/02/2018 as required under clause(3) of Article 348 of the Constitution of India].

URBAN DEVELOPMENT DEPARTMENT

NOTIFICATION

Shimla-2, the 05 February, 2018

No.UD-A (1)-4/2016.—In exercise of the powers conferred by sub-section (1) of section 27 of the Himachal Pradesh Municipal Act, 1994 (Act No.13 of 1994) read with sub-rule (6) of rule 90 of the Himachal Pradesh Municipal Election Rules, 2015, The Governor of Himachal Pradesh is pleased to notify in the Official Gazette election of President in respect of Municipal Council Mandi in District Mandi, as under:—

Name of Municipal Council/Nagar Panchayat	Name & Address of Elected President
Municipal Council, Mandi	Smt. Suman Thakur, Ward No. 05, Municipal Council, Mandi, District Mandi H.P.

By order,
Tarun Kapoor,
Addl. Chief Secretary (UD).

नियन्त्रक, मुद्रण तथा लेखन सामग्री, हिमाचल प्रदेश, शिमला–5 द्वारा मुद्रित तथा प्रकाशित
इलेक्ट्रॉनिक हस्ताक्षरित राजपत्र, वैबसाइट http://rajpatrahimachal.nic.in पर उपलब्ध है एवम् ऑनलाइन सत्यापित किया जा सकता है